

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

Appellate Case No. 2014-002687

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

The Honorable Lee S. Alford, Circuit Court Judge  
Case No. 14-CP-12-565

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Richardson Construction Company. ....Appellant

vs.

Chester County .....Respondent

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Appendix

--EMERGENCY CONSIDERATION REQUESTED--

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**RECEIVED**

DEC 23 2014

**S.C. SUPREME COURT**

R. Bryan Barnes (S.C. Bar No. 007818)  
Mary Lucille Dinkins (S.C. Bar No. 101177)  
Robert P. Wood (S.C. Bar No. 006206)  
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ATTORNEYS FOR APPELLANT,  
RICHARDSON CONSTRUCTION COMPANY

Other Counsel of Record:

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Attorney for Chester County

## Appendix Exhibits

1. Temporary Restraining Order
2. Verified Complaint
3. Brief Submitted to the Circuit Court in Support of Motion for Temporary Injunction
4. Exhibits A-K to the Brief Submitted to the Circuit Court
5. Supplemental Brief Submitted to the Circuit Court in Support of Motion for Temporary Injunction
6. Affidavit of Robert Richardson signed December 12, 2014
7. Affidavit of R. Joseph Richardson signed December 12, 2014
8. Application and Motion for Temporary Restraining Order and Temporary Injunction (Circuit Court)
9. Proposed Order Granting Temporary Injunction
10. Orders Denying Petition for Stay or Temporary Injunction
11. Instructions to Bidders
12. Order Denying Motion to Reconsider

**CERTIFICATE OF SERVICE BY MAIL**

Appeal No. 2014-002687

Case No. 14-CP-12-565

I, the undersigned employee with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on December 23, 2014, at the following address:

**Document:**

Appendix

**Counsel Served:**

The Honorable Jeanette F. Barber  
Clerk of Court  
The South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

The Honorable Lee S. Alford  
Moss Justice Center  
1675-1J York Highway  
York, SC 29745-7434

Joanie Winters, Esquire  
Winters Law Firm  
105 Main Street  
Chester, SC 29706

Mary L. Duihi  
Attorney for Petitioner





STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP-

150565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

TEMPORARY RESTRAINING ORDER

The Plaintiff has filed a Verified Complaint, in which Plaintiff seeks injunctive relief pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. This Court is satisfied that the verified allegations in the Complaint constitute sufficient evidence of the risk of immediate and irreparable injury to Plaintiff if Defendant is allowed to deny Richardson Construction Company the right to bid on the site preparation for Giti Tire Manufacturing plant (the "Project"). Further, this Order is granted without notice to Defendant to prevent irreparable damage to Plaintiff pending hearing on Plaintiff's request for a temporary injunction. This Court is of the opinion that Plaintiff has met the requirements of Rule 65 of the South Carolina Rules of Civil Procedure as to the entry of this Order without notice. Therefore, it is

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That Defendant is hereby restrained and enjoined from opening bids, identifying an apparent low bidder, awarding a contract or issuing a notice to proceed with the work of the contract on the Project to any person or entity pending further hearing on this matter;
2. That this Temporary Restraining Order, along with the Verified Complaint

shall be served upon Defendant immediately in accordance with the provisions of the South Carolina Rules of Civil Procedure;

3. That Defendant appear in Courtroom ~~110~~ <sup>Fairfield</sup> at the Chester County Courthouse on the 11 day of December, 2014, at 2 o'clock in the a.m./p.m. to show cause why a temporary injunction and/or permanent injunction should not be issued;

4. This Restraining Order shall be effective and be enforced upon the posting of a Bond in the penal amount of \$ 5,000 on behalf of Plaintiff in favor of Defendant, conditioned as required by law; and

5. This Order shall expire within ten (10) days of its entry or at such time as the request for a temporary injunction is heard.

EXECUTED this 1 day of December, 2014, at 9:30 o'clock in the a.m./p.m.

  
Brian M. Gibbons  
Chief Administrative Judge, Common Pleas  
Sixth Circuit

CLERK OF COURT  
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DEC - 1 A 10:50



STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP-

RICHARDSON CONSTRUCTION  
COMPANY,  
Plaintiff,  
vs.

CHESTER COUNTY,  
Defendant.

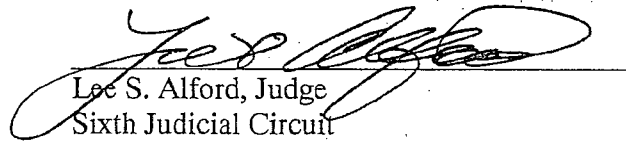
**TEMPORARY RESTRAINING ORDER**

This matter is before the court on Plaintiff's motion for a Temporary Injunction. Plaintiff filed an Application and Motion for a Temporary Restraining Order and Temporary Injunction on December 1, 2014. The Honorable Brian M. Gibbons, Chief Administrative Judge for the Sixth Circuit for the Court of Common Pleas, issued a Temporary Restraining Order on December 1, 2014, enjoining the Defendant from opening bids, identifying an apparent low bidder, or awarding a contract. Plaintiff's motion for a Temporary Injunction was heard December 12, 2014. During the hearing an unexpected issue arose and the court decided to take the matter under advisement. Accordingly, and upon good cause shown, the Temporary Restraining Order is continued in place until the court issues its order arising from the December 12, 2014 hearing. In addition, because these issues are of great public importance and to prevent these issues from becoming moot, if the court's order serves to deny Plaintiff a temporary injunction, the temporary restraining order will remain in place for forty-eight (48) hours after its

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2014

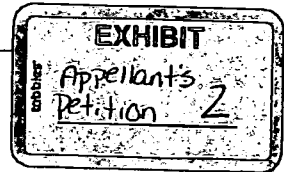
000010A

entry to give Plaintiff an opportunity to present the issues to the South Carolina Court of Appeals.

  
Lee S. Alford, Judge  
Sixth Judicial Circuit

December 17, 2014

#2  
COA



STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014CP 12 545

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

VERIFIED COMPLAINT

TEMPORARY RESTRAINING  
ORDER REQUESTED

Construction Bid Protest

The Plaintiff, complaining of the Defendant, would respectfully show that:

**PARTIES AND JURISDICTION**

1. The Plaintiff, Richardson Construction Company ("Richardson"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
2. Richardson is a licensed contractor specializing in site construction.
3. The Defendant, Chester County, is a political subdivision of the State of South Carolina located in Chester County, South Carolina.
4. The acts and omissions complained of herein occurred in Chester County, South Carolina.
5. This Court has jurisdiction of the matter and over the parties.
6. Venue is proper in this County.

**BACKGROUND**

7. Pursuant to S.C. Code Ann. §11-35-50, Chester County has adopted a

procurement policy governing contracts and procurements entered into by Chester County ("Chester County Policy").

8. The South Carolina Consolidated Procurement Code, S.C. Code Ann. §11-35-10, *et seq.* ("Code"), governs every procurement and expenditure of funds by the State of South Carolina acting through a governmental body. S.C. CODE ANN. §11-35-40(2).

9. Chester County was given an award of State public funds totaling \$36,325,000 for use to provide incentives to Giti Tire Manufacturing (USA) Ltd. ("Giti") to build a tire manufacturing plant in Chester County, South Carolina. Giti did in fact decide to construct a tire manufacturing plant in Chester County ("Project").

10. The \$36,325,000 of public funds for the Project was awarded from the South Carolina Coordinating Council for Economic Development ("Council") to Chester County for the Project in a contract dated June 5, 2014. *See* Ex. A to the Application and Motion for Temporary Restraining Order and Temporary Injunction.<sup>1</sup>

11. Section 8 of the Grant Award Agreements (Ex. A) requires "the selection of [the] Contractor by the Grantee must follow applicable procurement laws, regulations and guidelines." Furthermore, the Performance Agreement (also part of Ex. A) between Chester County, the State and Giti states that the selection of contractors for the Project "must take place in accordance with the Chester County procurement ordinance." ¶5.0.

12. On July 2, 2014, an advertisement was published in South Carolina Business Opportunities seeking Contractor's Prequalification Statements for the provision of mass site work services for the Project. *See* Ex. B.

13. Richardson timely submitted a completed Prequalification Statement. *See* Ex. C.

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<sup>1</sup> Each exhibit referenced herein is identical to the exhibits attached to the Application and Motion for Temporary Restraining Order and Temporary Injunction filed in this same case. The exhibits are not attached to the complaint.

14. Richardson is a licensed contractor and is otherwise qualified and capable of performing the work on the Project and otherwise complying with all contract requirements for the project. Among other qualifications, Richardson has a \$75,000,000.00 bonding capacity.

15. On October 30, 2014, Richardson received notice that it would not be permitted to submit a bid for the Project because it was not ranked in the top five of firms that submitted Prequalification Statements when the firms were ranked from most qualified to least qualified using a point system.

16. The elimination of qualified prospective bidders from the bidding process violates both the Code and the Chester County Policy.

17. Richardson timely filed a bid protest with the Chester County Chief Procurement Officer ("CPO") on November 12, 2014. *See* Ex. D. Richardson filed a supplement to its protest to the Chester County CPO on November 20, 2014. *See* Ex. E.

18. The Chester County CPO conducted an administrative review of Richardson's protest on November 21, 2014.

19. On November 24, 2014, Richardson received notice of the Chester County CPO's decision on its protest. In its response to Richardson's protest, the Chester County CPO concludes that the Chester County Policy, not the Code, governs the Project and that all procedures followed in the procurement of mass site work services for the Project were proper under the provisions of the Chester County Policy. *See* Ex. F.

**FOR A FIRST CAUSE OF ACTION**  
(Temporary Restraining Order)

20. Richardson repeats and realleges the allegations in the preceding paragraphs as if repeated verbatim herein.

21. The Chester County CPO's decision that the Project is governed by the Chester

County Policy is incorrect.

22. The South Carolina Consolidated Procurement Code, S.C. Code Ann. §11-35-10, *et seq.*, governs every procurement and expenditure of funds by the State of South Carolina acting through a governmental body. S.C. CODE ANN. §11-35-40(2).

23. The Code does not apply to grants, as defined by the Code. §11-35-40(2). The term "grant" is defined by the Code as "the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law." §11-35-310(19). The Code further provides that the definition of a grant "does not include an award, the primary purpose of which is to procure a specified end product, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract." *Id.*

24. The issuance of public funds for the Project by the Council to Chester County constitutes an award under the Code, not a grant. *See* Ex. A. Therefore, the Project is subject to the requirements of the Code.

25. The decision to deny Richardson the right to submit a bid for the Project violates the Code, including, but not limited to, §11-35-3023(B) of the Code.

26. Even if the Chester County CPO were correct that the Project is governed by the Chester County Policy rather than the Code, the CPO's decision that the procedures followed for the procurement of mass site work services for the Project comply with the requirements of the Chester County Policy is incorrect.

27. The Chester County Policy requires that, with certain limited exceptions that are inapplicable to the Project, all county contracts must be awarded by competitive sealed bidding. *See* Ex. G, PP-040, at III.E. The Chester County Policy does not authorize the elimination of



qualified prospective bidders through the use of a prequalification process. *See* Ex. G.

28. Furthermore, the section of the policy which the CPO relied upon, PP-140, Solicitation Outline at ¶9.01 (p.12) does not apply to bidding; it applies to Requests for proposals. The part of the Policy that applies to bidding is PP-150 "Uniform Solicitation format INVITATION FOR BID (IFB)" (emphasis in original) which does not contain the same provision as PP-140.

29. Therefore, the decision to deny Richardson the right to submit a bid for the Project violates the Chester County Policy.

30. Richardson is entitled to an Order of this Court declaring that the Project is subject to the requirements of the South Carolina Consolidated Procurement Code and that, pursuant to the Code, Richardson must be permitted to submit a bid for the mass site work services contract for the Project. If the Court determines that the Project is governed by the Chester County Policy rather than the Code, Richardson is entitled to an Order declaring that it must be permitted to submit a bid for the mass site work services contract for the Project pursuant to the Chester County Policy.

31. Richardson is entitled to temporary and permanent injunctive relief preventing the award of a mass site work services contract for the Project without permitting Richardson to submit a bid for the contract that is duly considered prior to the issuance of an award of the contract.

32. For the reasons explained above, Richardson has a substantial likelihood of succeeding on the merits of this action.

33. Richardson will suffer irreparable injury for which no other adequate legal remedy is available if a contract for the mass site work services for the Project is awarded

without permitting Richardson to submit a bid for the contract that is duly considered prior to the issuance of an award of the contract.

34. Richardson will lose the opportunity to generate profit from the Project, as well as lose the opportunity to generate revenue to pay the overhead of its company.

35. Chester County will not suffer irreparable damage by the granting of the injunctive relief requested herein and will suffer no other countervailing harm by the granting of such injunctive relief.

36. Giti will not suffer irreparable damage by the granting of the injunctive relief requested herein.

**FOR A SECOND CAUSE OF ACTION**

(Violations of the South Carolina Freedom of Information Act)

37. Richardson repeats and realleges the allegations in the preceding paragraphs as if repeated verbatim herein.

38. Chester County is subject to the provisions of the South Carolina Freedom of Information Act, S.C. Code Ann. §30-4-10, *et seq.*

39. On October 31, 2014, the undersigned, on behalf of Richardson, submitted a request to the Chester County CPO ("FOIA request") pursuant to the South Carolina Freedom of Information Act requesting all "documents and/or agreements showing the source of funds for the construction of the Giti tire plant" and all "documents and/or agreements showing the transfer or grant of money from the State of South Carolina to Chester County for the construction of the Giti tire plant." *See* Ex. H.

40. Pursuant to §30-40-30(c), Chester County was required to notify Richardson of its determination regarding the availability of the requested documents within fifteen (15) days. S.C. CODE ANN. §30-40-30(c).

41. Richardson has not been notified of Chester County's determination regarding the availability of the documents requested in its October 31, 2014, FOIA request, and Richardson has not received any documents responsive to this request from Chester County.

42. Chester County's failure to notify Richardson of its determination regarding the availability of the requested documents constitutes a violation of the South Carolina Freedom of Information Act.

43. Richardson is entitled to an Order of this Court requiring Chester County to produce all non-exempt documents responsive to its October 31, 2014, FOIA request.

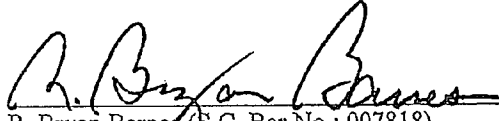
44. Richardson is entitled to all reasonable attorneys' fees and costs incurred in enforcing the provisions of the South Carolina Freedom of Information Act pursuant to S.C. Code Ann. §30-4-100(b).

WHEREFORE, Richardson prays for an Order of this Court:

- a. Temporarily restraining and enjoining the award of a mass site work services contract for the Project;
- b. Requiring: the Project to be re-bid; Richardson to be allowed to submit a bid; the bids to be opened publicly and the contract awarded to the lowest responsive responsible bidder;
- c. Requiring Chester County to produce all non-exempt documents responsive to its October 31, 2014, FOIA request;
- d. Awarding all of Richardson's reasonable attorneys' fees and costs incurred in enforcing the provisions of the South Carolina Freedom of Information Act; and
- e. For such other and further relief as may be just and proper.

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC

A handwritten signature in black ink, appearing to read "R. Bryan Barnes", is written over a horizontal line.

R. Bryan Barnes (S.C. Bar No.: 007818)

Mary Lucille Dinkins (S.C. Bar No.: 101177)

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**ATTORNEYS FOR RICHARDSON**

**CONSTRUCTION INC.**

December 1, 2014  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP-12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

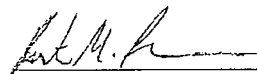
CHESTER COUNTY,

Defendant.

VERIFICATION

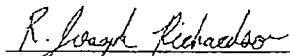
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S.C.  
2014 DEC -1 A 9:32

Personally appeared before me Robert M. Richardson, who being duly sworn deposes and says that he is the President of Richardson Construction Company, the Plaintiff in this matter, and in such capacity has read the within Complaint and that the allegations contained therein are true and correct to the best of his knowledge, information and belief.

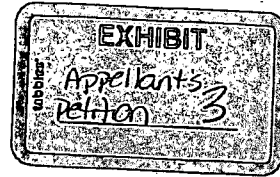


Robert M. Richardson,  
President  
Richardson Construction Company

SWORN to before me  
This 1<sup>st</sup> day of December, 2014



NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: DEC 20, 2015



STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

**MEMORANDUM IN SUPPORT OF  
RICHARDSON CONSTRUCTION  
COMPANY'S APPLICATION AND  
MOTION FOR A TEMPORARY  
INJUNCTION**

Plaintiff Richardson Construction Company ("Richardson") submits this Memorandum in Support of its Application and Motion for a Temporary Injunction. Richardson's Application and Motion for a Temporary Injunction is based upon this Memorandum and the authorities cited herein. For the reasons set forth below, Richardson's Motion should be granted in its entirety.

**PRELIMINARY STATEMENT**

In order to incentivize Giti Tire Manufacturing (USA) Ltd. ("Giti") to build a new tire manufacturing plant in Chester County, South Carolina, the South Carolina Coordinating Council for Economic Development awarded almost \$40 million to Chester County to assist with the site acquisition and site preparation costs for the construction of the new Giti tire plant (the "Project"). Pursuant to the South Carolina Consolidated Procurement Code ("Code"), such an award of public funds is subject to the requirements of the Code.

An advertisement was published in South Carolina Business Opportunities seeking Contractor's Prequalification Statements for the provision of mass site work services for the Project. Richardson timely submitted a Prequalification Statement. The Prequalification Statements submitted for the Project were ranked using a point system. Only the top five ranked

firms were permitted to submit bids for the Project. Because Richardson was ranked seventh, Richardson was not permitted to submit a bid for the Project, despite the fact that Richardson is more than qualified to perform the work.

The elimination of qualified businesses from the bidding process for a design-bid-build project, such as this one, violates the Code. The use of a prequalification process to reduce competition and eliminate qualified prospective bidders from the bidding process also violates the Chester County Purchasing Policy and Procedure Manual ("Chester County Policy"). Therefore, the prequalification process that was employed for the Project, which was used to eliminate qualified prospective bidders from the bidding process, violates both the Code and the Chester County Policy.

Richardson is entitled to temporary injunctive relief preventing the opening of bids and the award of a mass site work services contract for the Project. Richardson is entitled to permanent injunctive relief requiring that the Project be re-bid and that Richardson be allowed to submit a bid. If an order granting the requested temporary injunctive relief is not issued, Richardson will suffer irreparable harm for which no other adequate legal remedy is available because Richardson will forever lose the opportunity to generate revenue, profit, experience, and an enhanced reputation from this substantial project. Richardson will likely succeed on the merits of this matter at trial because, as set forth more fully below, the hodgepodge of procedures implemented for the procurement of mass site work services for the Project violate both the Code and the Chester County Policy, and the Project must therefore be re-bid regardless of which set of procurement rules the Court ultimately determines governs the Project. Accordingly, Richardson's Motion for a Temporary Injunction should be granted.

### STATEMENT OF THE FACTS

In an agreement between the South Carolina Coordinating Council for Economic Development ("Council") and Chester County, the Council awarded Chester County \$35,775,000 in public funds to be used for land acquisition and real property improvements for the construction of the Giti tire plant in Chester County ("Grant Award Agreement"). *See* Grant Award Agreement, attached hereto as Exhibit A. The Grant Award Agreement was subsequently amended to provide for the award of an additional \$550,000 for the Project, bringing the total amount of public funds awarded for the Project to \$36,325,000. *See* Ex. A, Addendum to Original Contract. On June 5, 2014, the Council, Chester County, and Giti entered into a contract governing the use of public funds awarded by the Council for the Project ("Performance Agreement"). *See* Performance Agreement, attached hereto as Exhibit B.<sup>1</sup> Thus, the use of public funds provided for the Project by the Council is governed by the Grant Award Agreement and the Performance Agreements. *See* Exs. A and B. The Grant Award Agreement and the Performance Agreement clearly provide that the subject public funds are awarded only for the specific purpose of assisting with the cost of land acquisition, site preparation, and site infrastructure improvements for the Project. *See* Ex. A, at §2; Ex. B, at ¶¶1.0, 3.0. Any surplus funds must be returned to the Council. *See* Ex. A, at §6. The Grant Award Agreement provides that the selection of contractors for the Project "must follow applicable procurement laws, regulations and guidelines." Ex. A, at §8. The Performance Agreement provides that the selection of contractors must take place in accordance with the Chester County Policy. Ex. B, at ¶5.0.

On July 2, 2014, the Columbia, South Carolina, firm Alliance Consulting Engineers, Inc.

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<sup>1</sup> Richardson received the Grant Award Agreement and Performance Agreement from the South Carolina Department of Commerce in response to a Freedom of Information Act ("FOIA") request submitted to the Department of Commerce. *See* Ex. E, at ¶¶7, 8.



("Alliance"), acting on behalf of Giti, published an advertisement in South Carolina Business Opportunities ("SCBO") seeking Contractor's Prequalification Statements for the Project. *See* SCBO advertisement, attached hereto as Exhibit C; *see also* Verified Compl., ¶12. The SCBO advertisement stated that interested contractors must have completed five projects within the past five years, with at least one having an Earthwork value of \$2,500,000 or more. Ex. C. Richardson timely submitted a completed Prequalification Statement. *See* Richardson's Contractor Prequalification Statement, attached hereto as Exhibit D; *see also* Compl., ¶13. Richardson has completed forty projects within the past five years, including four having an Earthwork value of at least \$2,500,000. *See* Affidavit of Robert M. Richardson, attached hereto as Exhibit E, at ¶¶15, 16; *see also* Ex. D. Therefore, Richardson greatly exceeds the minimum qualifications for the Project listed in the SCBO advertisement.

Subsequent to the publication of the SCBO advertisement, Alliance was replaced by Gresham, Smith and Partners ("Gresham Smith"), a Nashville, Tennessee firm, as the Project Engineer. *See* Response of Chester County Chief Procurement Officer, attached hereto as Exhibit F. Mr. Clyde Fish, Giti's Director of Projects and Manufacturing, and three individuals from Gresham Smith reviewed the Prequalification Statements submitted and ranked them using a point system. *See* October 29, 2014, email from Stephen Brown, PE, and Prequalification Scoring Sheet, attached hereto as Exhibit G;<sup>2</sup> *see also* Ex. F. Only the top five ranked firms were issued invitations to bid and permitted to submit a bid for the Project. *See* Exs. G and F. Because Richardson was not ranked in the top five, it was not issued an invitation to bid. *See* Exs. F and G. On October 30, 2014, Richardson received notice from Mr. Fish at Giti that it would not be allowed to submit a bid for the Project. *See* October 29, 2014, letter from Clyde

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<sup>2</sup> Richardson received the October 29, 2014, email and attached Prequalification Scoring Sheet from the South Carolina Department of Commerce in response to the FOIA request it submitted to the Department of Commerce. *See* Ex. E, at ¶7, 8.

Fish to Richardson, attached hereto as Exhibit H. Notably, the letter from Mr. Fish contained no determination that Richardson was not minimally qualified to perform the work for the Project. *See id.*; *see also* Ex. G.

On November 12, 2014, Richardson timely submitted a bid protest to Ms. Susan Cok, the Chester County Chief Procurement Officer ("Chester County CPO"), objecting to the decision not to allow Richardson to submit a bid for the Project. *See* Protest to the Chester County CPO, attached hereto as Exhibit I. As a result of new information learned from documents received in response to a Freedom of Information Act ("FOIA") request submitted to the South Carolina Department of Commerce, Richardson filed a supplement to its protest with the Chester County CPO on November 20, 2014.<sup>3</sup> *See* Supplement to Protest, attached hereto as Exhibit J.

The Chester County CPO conducted an administrative review of Richardson's protest on November 21, 2014. *See* Ex. F; *see also* Compl., ¶16. On November 24, 2014, Richardson received notice of the Chester County CPO's decision on its protest. *See* Compl., ¶17. In its response to Richardson's protest, the Chester County CPO concludes that the Chester County Policy, not the South Carolina Consolidated Procurement Code, governs the Project and that all procedures followed in the procurement of mass site work services for the Project were proper under the provisions of the Chester County Policy. *See* Ex. F.

Having exhausted its administrative remedies under the Chester County Policy, Richardson filed a verified complaint with the Court December 1, 2014, requesting a temporary restraining order. *See* Compl. Richardson also filed an Application and Motion for Temporary Restraining Order and Temporary Injunction on December 1, 2014 ("Motion"), which is the subject of this Memorandum. *See* Application and Mot. for TRO and Temporary Injunction.

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<sup>3</sup> Richardson also submitted a bid protest regarding this matter to the South Carolina Department of Commerce and State Engineer's Office. That protest, however, is still under administrative review and is not the subject of this action.

After a hearing on the Motion, the Court of Common Pleas for the Sixth Judicial Circuit, the Honorable Brian Gibbons presiding, determined that there is "sufficient evidence of the risk of immediate and irreparable injury to Plaintiff if Defendant is allowed to deny Richardson Construction Company the right to bid" on the Project. TRO. The Court therefore issued a Temporary Restraining Order enjoining Chester County from "opening bids, identifying an apparent low bidder, awarding a contract or issuing a notice to proceed with the work of the contract . . . ." *Id.*

#### STANDARD

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dep't of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (citations omitted). In order to obtain a temporary injunction, an applicant 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 inadequate remedy at law." *AJH Holdings, LLC v. Dumm*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009); *see also, e.g., Compton*, 392 S.C. at 366, 709 S.E.2d at 642. "When a prima facie showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969); *see also, e.g., Peek v. Spartanburg Regional Healthcare Sys.*, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005). The determination of whether to grant a temporary injunction lies within the discretion of the trial court. *See, e.g., Compton*, 392 S.C. at 366, 709 S.E.2d at 642; *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520 (2000); *Peek*, 367 S.C. at 454, 626 S.E.2d at 36.

### ARGUMENT

For the reasons set forth below, Richardson's Motion for a Temporary Injunction should be granted in its entirety, and the Court should issue an Order temporarily enjoining the opening of bids and the award of a mass site work services contract for the Project.

#### **I. The Project is Subject to the Requirements of the South Carolina Consolidated Procurement Code**

The South Carolina Consolidated Procurement Code "applies to every procurement or expenditure of funds by this State under contract acting through a governmental body . . . except that this code does not apply . . . to the issuance of grants . . . ." S.C. CODE ANN. §11-35-40(2). The Code defines the term "governmental body" as a state government department, commission, council, or other similar body. §11-35-310(18). Since the South Carolina Coordinating Council for Economic Development is a state government council, it is a governmental body subject to the provisions of the Code.

The Code defines the terms "grant" and "award" in §11-35-310(19) and distinguishes the two from each other. A "grant" is defined as "the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law." §11-35-310(19). A grant **"does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract."** *Id.* (emphasis added). Thus, the Code does not apply to grants, but it does apply to awards. As defined in §11-35-310(19), the distinction between a grant and an award for purposes of the Code is the specificity of the purpose for which the funds are given. Funds given to generally support a program authorized by law constitute a grant, whereas funds given for the purpose of procuring a specified end

product constitute an award.

The degree of specificity indicated for the use of the public funds awarded by the Council for the Project, as outlined in the Grant Award Agreement and the Performance Agreement, reveal that the public funds at issue for this Project constitute an award, not a grant. The funds are available only for the purpose of procuring a specified end product - the acquisition and preparation of the site for the construction of the Giti tire plant in Chester County. See Ex. A, at §§2, 3, 5, 6; Ex. B, at ¶3.0. The Grant Award Agreement and Performance Agreement make it clear that the funds may not be used for any other purposes. Ex. A, at §§2, 3, 6; Ex. B, at ¶3. Because the funds are being issued to procure a specified end product, the funds constitute an award under the Code, not a grant.<sup>4</sup> Therefore, the Project is subject to the requirements of the Code.

The Project is also subject to the Code pursuant to S.C. Code Ann. §13-1-25. The Council is a division of the Department of Commerce. S.C. CODE ANN. §13-1-10(A). Because the Council is a division of the Department of Commerce, it is subject to the laws and regulations governing the Department of Commerce. S.C. Code Ann. §13-1-25(A) provides that "monies constituting a fund of any kind used by the department [Department of Commerce] . . . are public monies" that "must be treated like public monies for all purposes" and are "subject to all accountability requirements governing public monies, including compliance with the South

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<sup>4</sup> It is also significant that the Council retains a great deal of control and oversight over the expenditure of the public funds for the Project through the terms and conditions of the Grant Award Agreement and Performance Agreement. See Exs. A and B. For example, all proposed agreements with contractors must be submitted to the Council prior to being finalized, written permission to proceed prior to incurring costs must be obtained from the Council, and an audit of expenditures made with the public funds must be submitted to the Council following completion of the Project. See Ex. A, at §§3.1, 3.2, 7; Ex. B, at ¶¶3.2, 3.3, 11. The Council's level of control and oversight over the use of the public funds further reveals that the funds do not constitute a grant to generally "support a program authorized by law" but instead constitute an award of funds subject to specific terms and conditions for the procurement of a "specified end product."

Carolina Consolidated Procurement Code . . . ." §13-1-25(A). As a division of the Department of Commerce, the Council is subject to S.C. Code Ann. §13-1-25. Therefore, the public funds awarded by the Council for the Project constitute public monies subject to compliance with the Code pursuant to S.C. Code Ann. §13-1-25.

Third, the contractual arrangement created by the Department of Commerce and Chester County is contemplated by the South Carolina Consolidated Procurement Code ("Procurement Code") and plainly stated to be subject to the Procurement Code. In §11-35-4810 the Procurement Code provides:

"Any public procurement unit may participate in, ... a cooperative purchasing agreement for the procurement of ... construction with one or more public procurement units... in accordance with an agreement entered into by and between the participants."

Several definitions are important. A "public procurement unit" is defined by §11-35-4610 (5) to mean "either a local public procurement unit or a state public procurement unit."

"Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit...." §11-35-4610 (1). A "local public procurement unit" means any political subdivision or unit thereof which expends public funds for the procurement of ... construction." §11-35-4610 (3).

Using the definitions above, it is apparent that the Department of Commerce is a public procurement unit which has participated in a cooperative purchasing agreement with Chester County for the procurement of construction. The performance agreement and Grant award agreements are exactly the type of agreement contemplated by §11-35-4810.

Apparently because efforts have been made to avoid the Procurement Code, §11-35-4880 states: "public procurement units shall not enter into a cooperative purchasing agreement for the purpose of circumventing this code."

The Department of Commerce and Chester County contemplated not using the Procurement Code and using a different set of procurement rules as made explicit in the Performance Agreement or Grant Award Agreement. Section 11-35-4880 prevents that and makes the Procurement Code apply. Furthermore, to the extent that the County or State argues that the construction is being procured by Giti and no public procurement rules apply and they are allowing Giti to run the procurement, 11-35-4880 emphatically requires that the Procurement Code not be circumvented.

Because the Project is subject to the Code pursuant to S.C. Code Ann. §§11-35-40(2), 13-1-25 and 11-35-4810 and 4880, the Council, Chester County, and Giti cannot enter into a contract exempting the Project from the requirements of the Code. It is well established under South Carolina law that contractual provisions violating a statute are unenforceable as against public policy. See, e.g., *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555-56, 606 S.E.2d 752, 758 (2004) ("The general rule is that courts will not enforce a contract which is violative of . . . statutory law." (citations omitted)); *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions." (citations omitted)); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866-67 (Ct. App. 2002) (explaining that contracts violating statutory law are unenforceable). The provision in the Performance

Agreement purporting to make the Project subject to the requirements of the Chester County Policy rather than the Code is unenforceable because it violates §§11-35-40(2) and 13-1-25 of the South Carolina Code, which make the Project subject to the Code.

## **II. The Decision to Eliminate Qualified Prospective Bidders from the Bidding Process Violates the Code**

The use of a prequalification process to eliminate Richardson and other qualified prospective bidders from the bidding process violates §11-35-3023(B) of the South Carolina Consolidated Procurement Code.

Section 11-35-3023(A) of the Code allows a governmental body to issue a request for qualifications and limit participation in the bidding for a project through a prequalification process. §11-35-3023(A). Although §11-35-3023(A) permits the use a prequalification process, §11-35-3023(B) states that, in a design-bid-build<sup>5</sup> procurement, “offers must be sought from all businesses that meet the published minimum requirements for prequalification.” §11-35-3023(B) (emphasis added). For purposes of the Code, a design-bid-build project is one for which the “governmental body sequentially awards separate contracts, the first for architectural and engineering services to design an infrastructure facility and the second for construction of the infrastructure facility according to the design.”<sup>6</sup> §11-35-2910(6). Thus, the Code requires that all businesses meeting the published minimum prequalification requirements for a design-bid-build project must be permitted to submit bids. Section 11-35-3023(B) of the Code is clarified by Regulation 19-445.2132: “The pre-qualification process shall not be used to unduly

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<sup>5</sup> The Code authorizes the use of six different project delivery methods for projects subject to the Code. §11-35-3005(1). The design-bid-build method is one of those six authorized project delivery methods. *Id.* Section 11-35-3023(A) prescribes a special rule for the use of a prequalification process in a design-bid-build project. §11-35-3023(A).

<sup>6</sup> Design-bid-build is distinct from design build. Design-bid-build is the traditional method of building in which the owner hires an architect or engineer to design and the owner next hires a contractor to build. The project under consideration is a design-bid-build project.



limit competition . . . . In a competitive bid, the pre-qualification process is not intended to eliminate bidders capable of completing the work being procured . . . ." S.C. Reg. 19-445.2132(A) (emphasis added).

A prequalification process was utilized for the bidding of the mass site work services contract for the Project. Richardson timely submitted a completed Prequalification Statement on July 18, 2014. *See* Ex. D. This Project is a design-bid-build project since the engineer was retained first to provide design services, and bids are now being solicited for construction services based on the design. *See* Ex. C. Therefore, bids must be sought from *all* businesses meeting the published minimum prequalification requirements pursuant to S.C. Code §11-35-3023(B) and Reg. 19-445.2132.

The SCBO advertisement seeking Prequalification Statements provided that contractors must have completed at least five projects within the past five years as a contractor, with at least one having an Earthwork value of \$2,500,000 or more. *See* Ex. C. Richardson exceeds these published minimum requirements. *See* Ex. E, ¶¶15, 16. The decision to solicit bids from only the top five ranked firms that were prequalified and eliminate the remaining firms meeting the published minimum qualifications, including Richardson, directly violates S.C. Code §11-35-3023(B) and Reg. 19-445.2132. Since this is a design-bid-build project, all firms satisfying the published minimum prequalification requirements, including Richardson, must be allowed to submit bids under the Code.

### **III. The Use of a Prequalification Process to Eliminate Qualified Prospective Bidders from the Bidding Process Violates the Chester County Policy**

In addition to violating the Code, the prequalification process employed for the procurement of mass site work services for the Project also violates the Chester County Policy. Therefore, if the Court were to determine that the Project is governed by the requirements of the

Chester County Policy rather than the Code, the Project still must be re-bid in compliance with the Chester County Policy. Pursuant to the Policy, Richardson must be permitted to submit a bid.

The Chester County Policy states that, with certain limited exceptions, "all county contracts shall be awarded by competitive sealed bidding." *See* Chester County Purchasing Manual, at PP-040, III.E (CCPP037-38<sup>7</sup>), attached hereto as Exhibit K. None of the exceptions to the requirement for competitive sealed bidding outlined in the Policy apply to this Project. *See id.* Therefore, the Policy requires that the contract for the Project be awarded through the use of competitive sealed bidding.

The Chester County Policy does not authorize the use of a prequalification process, and no provision in the Policy authorizes limiting the number of bids allowed for a project. *See* Ex. K. Unlike the State Procurement Code, which expressly provides for a prequalification process, a prequalification process is not part of competitive sealed bidding under the Chester County Policy. *See id.* The introduction to the Policy states that "[t]he intent of this policy manual is to foster competition among suppliers, enhance the value received from county expenditures and create standards for behavior in conducting purchasing activities." *See id.* at P-010, III (CCPP005). Likewise, one of the crucial stated objectives of the Policy is to promote competition and maximize the value per dollar spent. *See id.* at P-010, V (CCPP006). Limiting the number of bids permitted on a project and preventing a qualified, reputable business from submitting a bid on a procurement is contrary to the articulated intent and objectives of the Policy to promote and foster competition and maximize the value per dollar spent.

In the CPO's Response to Richardson's protest, the CPO asserts that the prequalification process utilized for the Project is not prohibited by the Chester County Policy because §9.0 of

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<sup>7</sup> For ease of reference, the Chester County Policy has been bates labeled CCPP001-127.

the Solicitation Outline to the Policy, according to the CPO, "reserves the right for Chester County to determine minimum qualification and thus limit the number of bidders." Ex. F. This is a blatant mischaracterization of §9.0 of the Solicitation Outline.<sup>8</sup>

Section 9.0 states: "The County reserves the right to determine whether **Offerors** have the minimum qualifications to complete the project." Ex. K, at Request for Proposal Solicitation Outline, §9.0 (CCPP071) (emphasis added). An "Offeror" is defined by the Solicitation Outline as "the single entity submitting the offer." *Id.*, at Request for Proposal Solicitation Outline, §1.01(6) (CCPP064).<sup>9</sup> An "Offer" is defined as "the bid or proposal submitted in response to this solicitation." *Id.*, at Request for Proposal Solicitation Outline, §1.01(5) (CCPP064). Thus, for purposes of the Solicitation Outline, an Offeror is an entity that has already submitted a bid for a Project.

Pursuant to §9.0, the County has the right to determine whether "Offerors" have minimum qualifications to complete the project at issue. Because an Offeror is an entity that has already submitted a bid, §9.0 only permits the County to reject an entity as not minimally qualified after having already obtained a bid from the entity. To assert, as the CPO does, that the authority granted in §9.0 to reject an entity as not minimally qualified after having already obtained a bid from the entity also allows the elimination of prospective bidders that are in fact minimally qualified is a gross misinterpretation of the provision, and the plain language of the provision cannot support such an interpretation. Section 9.0 permits the County to decline from

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<sup>8</sup> The CPO appears to be relying on §9.0 of the Solicitation Outline for Request for Proposals. Since this Project is being awarded through the use of bids, not proposals, the Solicitation Outline for Requests for Proposals is inapplicable. Nevertheless, Richardson will address the merits of the CPO's argument since the Solicitation Outline for the Invitation for Bids contains a similar provision.

<sup>9</sup> The definitions included in §1.01 of the Solicitation Outline for the Invitation for Bids are identical to those in the Solicitation Outline for the Request for Proposals. Because the Chester County CPO relies upon the Solicitation Outline for Request for Proposals, this Memorandum will refer to the definitions in that Solicitation Outline.

awarding a contract to a bidder on the basis that the bidder is not minimally qualified, but it does not permit the County to only allow those entities that it deems to be the *most* qualified to submit bids. Preventing prospective bidders from even submitting bids on the ground that they are not deemed to be one of the *most* qualified prospective bidders is different from deciding not to award a contract to a low bidder on the ground that it is deemed not *minimally* qualified for the project. Section 9.0 allows the latter, not the former.

The provisions and structure of the South Carolina Consolidated Procurement Code further provide evidence that the Chester County Policy does not authorize the use of a prequalification process to limit the number of qualified prospective bidders allowed to participate in the bidding process. As outlined above, the Code specifically permits the use of a prequalification process and outlines rules governing its use. *See* §11-35-3023. The fact that the drafters of the Code felt that it was necessary to specifically authorize prequalification and outline rules governing its use indicates that prequalification should be expressly addressed and prescribed in a procurement policy in order to avoid abuses in its implementation. Prequalification has a clear potential to be abused in order to reduce competition and arbitrarily limit the number of bids that have to be considered for a procurement. Simply put, prequalification, if not checked, has the potential to allow officials to unfairly manipulate and control the bidding process. The absence of a provision in the Chester County Policy authorizing the use of a prequalification process further reveals that the Policy does not permit the use of a prequalification process to eliminate qualified prospective bidders from the bidding process.

It is further worth mentioning that the CPO has not and cannot determine that Richardson is not minimally qualified to perform the work for the Project. Richardson specializes in site construction and has performed numerous large-scale projects. *See* Ex. E, ¶¶6, 9-11, 15-17.

Richardson has a \$75,000,000 bonding capacity, and it has a record of taking over projects running behind schedule and finishing them ahead of schedule. *Id.* at ¶¶13, 17. It simply cannot be determined that Richardson is not minimally qualified to complete the Project. Therefore, §9.0 is inapplicable to Richardson and does not authorize the use of a prequalification process to reduce competition and eliminate qualified prospective bidders from the bidding process.

The prequalification process employed for the procurement of mass site work services for the Project, which was used to eliminate qualified prospective bidders and reduce competition in the bidding process, is not authorized by the Policy and directly contradicts the spirit and objectives of the Policy. Richardson must be allowed to submit a bid for the Project pursuant to the requirements of the Chester County Policy as well as the South Carolina Consolidated Procurement Code.

**IV. Richardson Is Entitled to a Temporary Injunction Preventing the Opening of Bids and the Award of a Contract**

Richardson is entitled to a temporary injunction preventing the opening of bids and the award of a mass site work services contract for the Project.<sup>10</sup> If a temporary injunction is not issued, Richardson will suffer irreparable harm for which there is no adequate remedy at law.

This is a large-scale project that would generate a great amount of revenue and profit for Richardson. *See* Ex. E, ¶¶18-20. This Project would also provide great experience to Richardson and enhance its professional reputation. *Id.* at ¶¶21, 22. As explained in Sections II and III above, Richardson is entitled to submit a bid for the Project under both the South Carolina Consolidated Procurement Code and the Chester County Policy. Richardson has

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<sup>10</sup> Richardson is primarily concerned that a contract not be awarded. Richardson, however, is also requesting that the temporary injunction prevent the bids submitted for the Project from being opened so as to not prejudice other bidders and so that Chester County, Giti, and the Council will not lose the benefit of competitive sealed bids opened publicly.

wrongfully been prevented from submitting a bid for the Project. If a temporary injunction preventing the opening of bids and the award of a contract for the Project is not issued, a contract will be awarded,<sup>11</sup> and Richardson will be barred from obtaining the significant amount of work and experience associated with this contract and will not even have had the opportunity to be properly considered for the contract. This would result in great irreparable harm to Richardson because Richardson would forever miss the opportunity to obtain the profit, revenue, experience, and enhanced reputation that would ensue from performing the work for the Project. *See id.*, ¶26. In addition to irreparably harming Richardson, failing to issue the requested temporary injunction would also result in irreparable harm to all other qualified prospective bidders that have been wrongfully excluded from the bidding process and denied the opportunity to compete for the Project.

If the contract is awarded to another entity, and Richardson therefore suffers the resulting irreparable harm, there will be no adequate remedy at law to compensate Richardson for this lost opportunity. *See, e.g., Peek*, 367 S.C. at 457, 626 S.E.2d at 37-38 (holding that there would be no adequate remedy at law for a doctor's harm in the form of lost income, expertise, and reputation if a temporary injunction preventing the termination of the doctor's hospital privileges were not issued).

For the reasons set forth in Sections I-III above, Richardson is likely to succeed on the merits of this litigation. As explained above, the prequalification process implemented for the procurement of mass site work services for the Project violates both the Code and the Chester County Policy. Pursuant to the requirements of the Code and the Chester County Policy,

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<sup>11</sup> In its Response to Richardson's Protest, the Chester County CPO asserts that, although it will issue a stay for ten days, the best interests of the County are allegedly served by "moving forward" with the Project. *See Ex. F.* Therefore, it is reasonable to assume that a contract for the Project will be quickly awarded if a temporary injunction is not issued.

Richardson must be allowed to submit a bid for the Project. Therefore, regardless of which set of governmental procurement rules the Court ultimately determines governs this Project (the Code or the Policy), Richardson is entitled to an Order of this Court requiring the Project to be re-bid and requiring that Richardson be allowed to submit a bid that is duly considered.

Granting Richardson's requested temporary and permanent relief will not cause significant delay, harm, or risk to the Project. Richardson can prepare and submit a bid for the Project within just five days of receiving the bid package. *See* Ex. E, ¶27. The minimal delay associated with the time it will take Richardson to prepare and submit a bid will not risk or jeopardize the Project. *Id.* at ¶¶32, 33. The Grant Award Agreement simply requires the Project to be completed within eighteen months from the date of the award of public funds, and the Council has the discretion to grant extensions to the completion date. Ex. A, at §16. Furthermore, the bids that have been submitted have not yet been opened, so the advantages of a competitive sealed bidding process will not be lost by re-bidding the Project. Put simply, granting the requested injunctive relief results in only minimal and inconsequential delay while providing Richardson and other eliminated but qualified prospective bidders the fair opportunity to compete for the Project that they are afforded under the Code and the Chester County Policy. *See* Ex. E, ¶¶27-33.

Richardson has made a prima facie showing that it is entitled to injunctive relief, and the Court should therefore issue a temporary injunction preventing the opening of bids and the award of a contract for the Project.

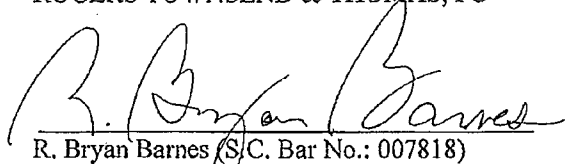
### **CONCLUSION**

For the reasons set forth herein, Richardson's Application and Motion for a Temporary Injunction should be granted in its entirety, and the Court should issue a temporary injunction

enjoining the opening of bids and the award of a contract for the Project.

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC

A handwritten signature in black ink, appearing to read "R. Bryan Barnes", is written over a horizontal line.

R. Bryan Barnes (S.C. Bar No.: 007818)

Mary Lucille Dinkins (S.C. Bar No.: 101177)

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**ATTORNEYS FOR RICHARDSON  
CONSTRUCTION COMPANY**

December 10, 2014  
Columbia, South Carolina



STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

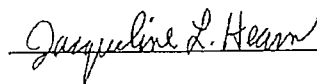
CHESTER COUNTY,

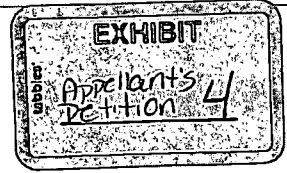
Defendant.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2014, I served the foregoing document by Overnight Fed Ex Delivery and by email as indicated on the following:

Joanie Winters, Esquire  
Winters Law firm  
105 Main Street  
Chester, SC 29706  
[joanie@winterslawsc.com](mailto:joanie@winterslawsc.com)

  
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# EXHIBIT A

## Grant Award Agreement

SOUTH CAROLINA COORDINATING COUNCIL  
FOR ECONOMIC DEVELOPMENT  
1201 Main Street, Suite 1600  
Columbia, South Carolina 29201

GRANT AWARD AGREEMENT

In accordance with the provisions of Section 12-28-2910 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), the South Carolina Coordinating Council for Economic Development, hereinafter called the Council, does commit and grant to Chester County, hereinafter called the Grantee, the sum in dollars set forth in Section 3 below for the Project identified in Section 2 below. The acceptance of the Agreement creates a contract between the Council and the Grantee, legally binding the Grantee to carry out the activities and obligations set forth in the Application and this Agreement, all in accordance with the terms and conditions set forth in this Agreement and in any appendices attached hereto and any other documents or conditions referred to herein.

**Section 1: DEFINITIONS:**

- (a) Agreement means this Grant Award Agreement.
- (b) Application means the grant application forms submitted by the Grantee to the Council.
- (c) Company means the economic development corporate entity that is identified in the Application.
- (d) Contractor means a private contractor who undertakes all or part of the Project.
- (e) Council means the South Carolina Coordinating Council for Economic Development (CCED).
- (f) Grant means the dollars committed by the Council to the Grantee for the Project.
- (g) Grantee means the unit of government designated for the Grant and set forth above.
- (h) Project means the project identified and described in the Application.
- (i) State means the State of South Carolina and any agencies or offices thereof.

**Section 2: PROJECT DESCRIPTION:** Funds will be used for land acquisition and real property improvements for Gil Tive Holdings (USA) Ltd (Project Summer), which will invest \$560 million and create 1,700 new jobs. This project has been approved by the Council and is included by reference as Coordinating Council Grant #C-14-2371 - Land Acquisition and Real Property Improvements.

**Section 3: AWARD AMOUNT:** The Council hereby commits an amount not to exceed \$35,775,000, to be used only for the Project and related costs, as described in the Application. Eligible costs that can be paid from the Grant shall include only those costs expressly set forth in the Application.

**3.1: Approval of Third Party Contracts:** The Grantee must submit all proposed agreements with third party contractors engaged to perform work within the scope of the Grant to the Council prior to finalizing those agreements.

**3.2: Notice to Proceed:** The Grantee must obtain from the Council written notice to proceed prior to incurring costs against the Grant. If the Grantee or the Company needs to incur expenses prior to the Council's notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

**3.3: Engineering Costs:** Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.

**3.4. Administrative Fees:** The Grantee may not charge an administration fee in connection with the Grant.

**Section 4: AMENDMENTS:** Any changes in the scope of work of the Project, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.

**Section 5: PERFORMANCE:** By acceptance of this Grant, the Grantee warrants that it will complete or cause to be completed the Project as described in the approved Application, including any approved amendments appended hereto. Should Grantee fail to cause the completion of all or part of the Project, the Council shall be entitled to reimbursement from the Grantee of any Grant funds that were received by the Grantee for any work that was not performed.

**Section 6: FUNDING UNDERRUNS:** The Grantee agrees that it will return surplus Grant funds that result from project cost underruns.

**Section 7: AUDIT:** The Grantee must include an examination and accounting of the expenditures of Grant funds in its first annual audit following the completion of the Project, and submit a copy of the audit report to the Council. The Grantee agrees that it will reimburse the Council for unauthorized and unwarranted expenditures disclosed in the audit, if so directed by the Council. Upon request of the Council, the Grantee shall make available; and cause the Company to make available, for audit and inspection by the Council and its representatives all the books, records, files and other documents relating to any matters pertaining to the Project, the Application or this Agreement. The Grantee shall have prepared an audit of Grant funds received under this Agreement that adheres to the following audit requirements, whichever is applicable:

- (a) Generally accepted auditing standards established by the American Institute of Certified Public Accountants, (AICPA);

- (b) The General Accounting Office (GAO) Standards for Audits of Governmental Organizations, Programs, Activities, and Functions, latest revised edition (Yellow Book);

**Section 8: CONTRACTOR SELECTION:** If the Grantee desires to select a Contractor to undertake all or any part of the scope of work of the Project, then the selection of that Contractor by the Grantee must follow applicable procurement laws, regulations and guidelines. The Grantee warrants that it will adhere to all such applicable procurement laws, regulations and guidelines in the selection of the Contractor. In addition, the Grantee may not award contracts to any Contractors who are ineligible to receive contracts under any applicable laws or regulations of the State.

Upon request, the Grantee must make available to the Grantee's auditor, the Council, and its representatives, and the public Grantee's records and other documentation of the procurement process and any sole source justification. If the Grantee fails to adhere to procurement procedures required by law, the Council may call for repayment by the Grantee for Grant funds that were expended in a disallowable manner.

A Contractor must represent that it has, or will secure at its own expense, all personnel required in the performance of the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with the Council or the Grantee.

All of the services required to complete the Project will be performed by the Grantee and/or a Contractor, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

The Grantee and/or a Contractor shall be liable for and pay all taxes required by local, state, or federal governments, which may include, but not be limited to, social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Council to or for the benefit of the Grantee and/or a Contractor or his employee or agents by reason of this Agreement.

The Grantee warrants that it will enforce all terms and conditions of this Agreement upon the Company and any Contractors.

**Section 9: CONFIDENTIAL INFORMATION:** Any reports, information, data, or other documentation given to or prepared or assembled by the Grantee under this Agreement which the Council requests to be kept confidential shall not be made available to any individual or organization by the Grantee without the prior written approval of the Council.

**Section 10: DISCRIMINATION:** The Grantee shall not, and shall impose on its Contractors the obligation not to, discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The Grantee and any Contractor shall be required to take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, age, sex, national origin, or handicap.

**Section 11: INTEREST OF CERTAIN FEDERAL OR STATE OFFICIALS:** No elected or appointed State or federal official shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**Section 12: INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANTEE, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS:** No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or this Agreement. The Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Project and this Agreement this provision prohibiting such interest.

**Section 13: PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION:** The assistance and Grant funds provided under this Agreement shall not be used for the payment of any bonus or commission for the purpose of obtaining the Council's approval of the Application, or the Council's approval of any applications for additional assistance or Grant funds, or any other approval or concurrence of the Council required under this Agreement. However, the payment from Grant funds of reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Project costs.

**Section 14: MAINTENANCE OF RECORDS:** The Grantee shall retain records for property purchased totally or partially with Grant funds for a period of three years after its final disposition. The Grantee shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.

**Section 15: MBE OBLIGATION:** The Grantee agrees to use its best efforts to ensure that minority business enterprises, as identified in Article 21, Sections 11-35-5210 through 11-35-5270 of the Code have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with funds provided under this Agreement. In this regard, the Grantee and its Contractors shall take all necessary and reasonable steps to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

**Section 16: PROJECT COMPLETION:** The Grantee must complete, or cause to be completed, the portion of the Project to be funded in whole or in part with Grant funds within 18 months of the Date of Award of this Grant. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.

**Section 17: SANCTIONS:** If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the Council may take, in addition to

any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

**Section 18: APPLICABLE LAW:** This Agreement is made under and shall be construed in accordance with the laws of the State of South Carolina, without regard to conflicts of laws principles. The federal and state courts within the State of South Carolina shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement.

**Section 19: APPROPRIATIONS:** Notwithstanding any other provisions of this Agreement, the parties hereto agree that the Grant funds awarded hereunder are payable by appropriations from the State. In the event sufficient appropriations, grants, and monies are not made available to the Council to pay the compensation and expenses hereunder for any fiscal year, this Agreement shall terminate without further obligation of the Council. In such event, the Council shall certify to the Grantee the fact that sufficient funds have not been made available to the Council to meet the obligations of this Agreement; and such written certification shall be conclusive upon the parties.

**Section 20: COPYRIGHT:** No material produced in whole or in part under this Grant shall be subject to copyright in the United States or in any other country. The Council shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Grant.

**Section 21: TERMS AND CONDITIONS:** The Council reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Council and any other agency of the State.

**Section 22: REPORTING REQUIREMENTS:** The Grantee agrees to submit quarterly progress reports that provide a status update and identification of any material issues affecting the Project. Progress reports will be due on the first day of the month beginning with the first full month after commencement of the Project. Failure to submit progress reports will be subject to sanctions identified in Section 17 herein. The Grantee further agrees to complete and submit all quarterly progress reports and any other reports, in such form and according to such schedule, to the extent not specified herein, as may be required by the Council.

**Section 23: PROJECT START-UP:** The project must begin within three months of the Date of Award of the Grant. If the Grantee or the Company does not begin the Project within three months of the Date of Award of the Grant, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds provided to Grantee and terminate this Agreement. For purposes of this section, Grantee or the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.

**Section 24: LIABILITY:** The Grantee understands that Council accepts no liability for the Project nor any responsibility other than its agreement to provide the Grantee the Grant funds for the Project in the amount shown in Section 3, insofar as such funds are expended in accordance with the terms and conditions of this Agreement. During the

term of the Grant, the Grantee shall maintain tort liability insurance or shall have a self-funded and excess liability program with coverage amounts sufficient to meet the limits set forth under the SC Torts Claims Act in Section 15-78-120, as may be amended.

**Section 25: PAYMENT:** The Grantee must submit to the Council a certified request for payment for work that is documented by the Grantee. The Council, upon its approval of the request for payment, shall forward such requests to the Finance Department of the South Carolina Department of Commerce. Payments are issued from the Comptroller General's office. Payment requests should be submitted to the Council no more than once a month.

The Grantee will certify, to the best of its knowledge, information and belief, that the work on the Project for which reimbursement is requested has been completed in accordance with the terms and conditions of this Agreement, and that the payment request is due and payable from Grant funds.

All requests for payment must be certified as valid expenditures by an official representative of the Grantee. Invoices and canceled checks supporting the Grantee's request for reimbursement from Grant funds must be kept on file and be available for inspection at any time.

**Section 26: RESPONSIBILITY FOR MAINTENANCE:** Maintenance of new roads and other improvements to the Grantee's or Company's right of way and/or property is the sole responsibility of the Grantee. Neither the Council nor the State shall have any responsibility whatsoever to maintain such roads and other improvements relating to the Project. The Grantee may assign this responsibility to any agreeable party.

**Section 27: SEVERABILITY:** If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.



This Agreement shall become effective, as of the Date of Award, upon receipt of one copy of this Agreement which have been signed in the space provided below. The agreement must have original signatures and must be returned within fifteen days from the Date.

6-5-14  
Date of Award

Alan D. Young  
Alan D. Young  
Executive Director  
Coordinating Council for Economic Development

ACCEPTANCE FOR THE GRANTEE

R. Carlisle Roddey  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

7/01/14  
Date

R. CARLISLE RODDEY County Supervisor  
Typed Name and Title of Authorized Official

ATTEST:

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate

Nikki R. Haley  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

Robert M. Hill III  
Secretary

## ADDENDUM TO ORIGINAL CONTRACT

Glit Tire Holdings (USA), Ltd. ~HC-14-2371

CHESTER COUNTY

ORIGINAL CONTRACT AMOUNT  
APPROVED 06-05-14

\$35,775,000

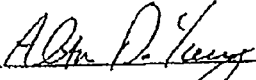
ADDITIONAL FUNDING  
APPROVED 09-04-2014

\$550,000

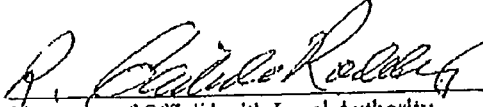
Funds will be used for additional costs anticipated for land acquisition, site preparation, infrastructure, and other real property improvements..

REVISED TOTAL CONTRACT AMOUNT

\$36,325,000

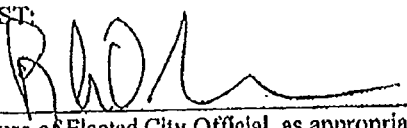
  
Alan D. Young  
Coordinating Council for Economic Development

9.4.14  
Date

  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

9/19/14  
Date

ATTEST:

  
Signature of Elected City Official, as appropriate

1201 Main Street, Suite 1800, Columbia, SC 29201  
Tel: (803) 737-0400 • Fax: (803) 737-0418 • [www.sccommerce.com](http://www.sccommerce.com)

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# **EXHIBIT B**

## Performance Agreement



**PERFORMANCE AGREEMENT**  
(Governor's Closing Fund Assistance)  
C-14-2371

This Performance Agreement ("Agreement") is made to be effective the 5<sup>th</sup> day of June, 2014, by and among Chester County, a political subdivision of the State of South Carolina and hereinafter referred to as the "Grantee," Giti Tire Holdings (USA) Ltd., hereinafter referred to as the "Company," and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council."

**WITNESSETH**

That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the above parties do hereby agree as follows:

- 1.0 Agreement. The parties recognize that this Agreement is based on a Governor's Closing Fund ("GCF") grant award being awarded or made by the Council to the Grantee in an amount not to exceed Thirty Five Million Seven Hundred and Seventy Five Thousand and No/100 Dollars (\$35,775,000) (the "Grant") for the purposes identified in Section 3.0 herein.
- 2.0 Project Description. The Company will establish and equip tire manufacturing plants and support operations of a corporate facility, a research and development facility and a distribution facility through the acquisition, construction and purchase of certain land, buildings, furnishings, apparatuses and equipment in the County, hereinafter referred to as the "Project."
- 3.0 Use of Proceeds. The Grantee will use the Grant to assist the Company with the costs of site acquisition, site preparation, site infrastructure improvements and other related capital expenditures for real property improvements at the Project site in Chester County (collectively, "Grant Project"). To the extent that grant funds are disbursed under this Agreement such disbursed funds are, hereinafter referred to as the "Assistance." Any changes in the scope of the Grant Project, the costs of which are to be reimbursed through Grant funds must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.
- 3.1 Disbursement of Funds. No funds will be disbursed until the approval of expenditures, through submission of invoices and proof of payment to the Grantee; provided, however, that funds will be disbursed within thirty (30) days from the date that invoices for eligible expenditures and sufficient proof of payment are delivered to the Grantee.
- 3.2 Third Party Contracts. The Company must submit all agreements with third party contractors engaged to perform work within the scope of the Grant to the

Council prior to or simultaneously with the submission of invoices relating to that agreement.

- 3.3 Notice to Proceed: The Company obtained from the Council a written conditional notice to proceed dated May 8, 2014 (the "Notice to Proceed") prior to incurring any costs to be reimbursed from the Grant. Any expenditure made prior to the date of the Notice to Proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.
- 3.4 Engineering Costs: Reimbursement of engineering costs for professional services will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.
- 3.5 Compliance with GCF Requirements: The Grantee and the Company must comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCF funds.
- 3.6 Funding Overruns: The Company agrees that it will commit and provide monies from its own resources for cost overruns that are required to complete the Grant Project. This Agreement creates no obligation on the part of the Grantee, the Council or the State of South Carolina (the "State") to provide funds for the cost overruns.
- 3.7 Use of Grant Funds: The Company must complete the Grant Project within twenty-four (24) months of the date hereof. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion, and such extensions shall not be unreasonably withheld.
- 4.0 Project Start-Up: The Project must begin within six months of the date hereof. Subject to the extensions provided in this Section 4.0, if the Company does not begin the Project within six months of the date hereof, the Council reserves the right to rescind the Grant and terminate this Agreement. For purposes of this section, the Project shall have begun once the Company has acquired the Project site in Chester County. Notwithstanding the foregoing, if the due diligence undertaken in connection with the purchase of the Project site reveals a condition on or affecting the Project site that cannot be resolved to the Company's satisfaction within six months of the date hereof and will delay the purchase beyond six months of the date hereof, such time period will automatically be extended an additional three months. Further time period extensions may also be requested by the Company and will be subject to approval by the Council, which will not be unreasonably withheld.
- 5.0 Contractor Selection: If the Company desires to select a private contractor to undertake all or any part of the scope of work of any portion of the Grant Project, then the selection

of that contractor by the Company must take place in accordance with the Chester County procurement ordinance.

- 6.0 **Investment Requirement.** The Company agrees to make and maintain, or cause to be made and maintained through an Affiliate (as defined below), capital investment of not less than Five Hundred Million and No/Dollars (\$500,000,000), above and beyond any reimbursement from the Grant or any additional State grants, for land, building and machinery and equipment at the Project (the "Investment Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that it has satisfied the Investment Requirement (the "Investment Achievement Period"). The Company's investment may be verified at the request of the Grantee or the Council. For purposes of this Agreement, "Affiliate" means any corporation, partnership, or other entity that controls or is controlled by or is under common control at any level with the Company.
- 7.0 **Job Creation Requirement.** The Company agrees to create and maintain, or cause to be created and maintained through an Affiliate, no fewer than 1,700 new, full-time jobs at the Project and otherwise within the State (the "Job Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that it has satisfied the Job Requirement (the "Job Achievement Period"). Notwithstanding the foregoing, for purposes of this Agreement, no employee of the Company or an Affiliate at a retail store will be counted towards the Job Requirement.
- 8.0 **Maintenance Periods; Terms.**
- 8.1 Once the Company has satisfied the Investment Requirement within the Investment Achievement Period, the Company agrees to maintain the Investment Requirement at the Project for a period beginning on the first date following the expiration of the Investment Achievement Period and ending on the fifth anniversary thereof (the "Investment Maintenance Period").
- 8.2 Once the Company has satisfied the Job Requirement within the Job Achievement Period, the Company agrees to maintain the Job Requirement at the Project for a period beginning on the first date following the expiration of the Job Achievement Period and ending on the fifth anniversary thereof (the "Job Maintenance Period").
- 9.0 **Access to Records.** The Company agrees to provide the Grantee and the Council reasonable access to its facilities to substantiate the employment and investment committed by this Agreement. This covenant shall continue until the Company is notified in writing by the Council that the Job Requirement and the Investment Requirement have each been met, the Investment Maintenance Period and the Job Maintenance Period have each expired, and funds have been expended and documented, or until repayment of the Assistance occurs in accordance with this Agreement.

- 10.0 Compliance. The Council will review the hiring records and notify the Company in writing of its compliance or non-compliance with this Agreement. Upon written notification from the Council that both the Job Requirement and the Investment Requirement have been fulfilled and the Job Maintenance Period and the Investment Maintenance Period have each expired, this Agreement and all obligations of the Company, unless otherwise stated, hereunder shall terminate.
- 11.0 Maintenance of Records. The Company shall retain records for property purchased totally or partially with Grant funds for a period of three years after such purchase. The Company shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.
- 12.0 Repayment of Assistance. Failure to satisfy and maintain the Job Requirement and the Investment Requirement as set forth herein may result in repayment of all or a portion of the Grant funds expended. The Company will make re-payments to the Grantee, who will immediately notify and reimburse the Council.
- 12.1 Early Default. If the Company does not locate in the State or otherwise fails to invest at least \$150,000,000 and create at least 300 new, full-time jobs in the State by December 31, 2020, then Company shall be required to tender to the Grantee an amount equal to the amount of all Grant funds expended as of such date.
- 12.2 Achievement Period Requirements. On or before the expiration of the Investment Achievement Period, the investment by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than the Investment Requirement, and on or before the expiration of the Job Achievement Period, the number of new, full-time jobs created by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than 88% of the Job Requirement (the "Minimum Job Requirement"). If the Company does create jobs and/or make investment but fails to meet such requirements, the Company shall be required to repay a portion of the Grant funds expended, based on the actual number of jobs created and/or investment level achieved as of the last day of the Investment Achievement Period or the Job Achievement Period, as applicable. The repayment amount for failure to meet either the Investment Requirement or the Minimum Job Requirement will be calculated independently in accordance with the formulas provided below.
- 12.2.1 Shortfall in Investment. In the event that the Company fails to meet the Investment Requirement by the end of the Investment Achievement Period ("Investment Creation Default"), then, following written notice from the



Council, the Company shall repay a portion of the Grant funds expended in accordance with the Investment Shortfall Formula below:

- a. The "Investment Shortfall Formula" is equal to 25% of the Grant funds expended multiplied by Investment Shortfall Percentage.
- b. The "Investment Shortfall Percentage" is equal to 100% minus (the Company's Capital Investment (as defined below), divided by \$500,000,000).

"Company's Capital Investment" is defined as all capital investment (under the International Financial Reporting Standards or under the General Accepted Accounting Principles) made by the Company both (i) at the Project and (ii) otherwise within the State in connection with the Project and in infrastructure connected to the Project, but excluding all costs reimbursed to the Company through the Grant and any additional State grants. Any reference to capital investment shall be deemed a reference to the gross capital investment value at the time of acquisition or investment and shall not reflect any depreciation or write down of the book value. In the event that the Company, under either its internal policies or under the rules of the International Financial Reporting Standards, does not treat a cost(s) as a capital, but such cost(s) could be treated as capital under the Generally Accepted Accounting Principles, then such cost(s) shall qualify for the purposes of this Agreement as a capital investment.

12.2.2. Shortfall in Job Creation. In the event that the Company fails to meet the Minimum Job Requirement by the end of the Job Achievement Period ("Job Creation Default"), then, following written notice from the Council, the Company shall repay a portion of the Grant funds expended in accordance with the Job Shortfall Formula below.

- a. The "Job Shortfall Formula" is defined as 25% of the Grant funds expended multiplied by Job Shortfall Percentage.
- b. The "Job Shortfall Percentage" is 100% minus (the actual number of new, full-time jobs created by the Company in South Carolina, divided by the Minimum Job Requirement).

12.2.3 If required, repayments are due and payable by the applicable Due Date (as defined below) and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.

12.2.4 If the Company satisfies the Job Requirement and the Investment Requirement by the end of the Job Achievement Period or the Investment

Achievement Period, as applicable, it shall not have any repayment obligations under this Section 12.2.

- 12.3 Maintenance Period Requirements. As of each and every Reporting Date (defined below), the Company's capital investment both at the Project and otherwise within the State in connection with the Project may not be less than the Investment Requirement, and the number of jobs retained by the Company both at the Project and otherwise within the State in connection with the Project may not be less than the Minimum Job Requirement. If the Company fails to maintain the Investment Requirement or the Minimum Job Requirement as of any of the Reporting Dates for any year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, the Company will be required to repay a portion of the Grant funds expended in accordance with the formulas below. The Company's repayment obligation shall be calculated on each anniversary of the end of the Investment Achievement Period or the Job Achievement Period, as applicable (each a "Reporting Date") utilizing the monthly average for the immediately preceding 12 months of new, full-time jobs created and existing and the monthly average for the immediately preceding 12 months of investment maintained during the applicable year of the Investment Maintenance Period or the Job Maintenance Period, as applicable. For purposes of determining the monthly average, the Company may, after the end of the first year of the Investment Maintenance Period or the Job Maintenance Period, select a reasonable day, in its sole discretion, upon which such jobs and investment will be determined on a monthly basis. Thereafter, that day in the month shall apply for each applicable year for the remainder of such Maintenance Period. The pro-rata repayment obligation for failure to maintain the Minimum Job Requirement or the Investment Requirement during each year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, will be calculated as follows:
- a. "Job Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Job Shortfall Percentage as of the Reporting Date, of the relevant year.
  - b. "Job Shortfall Percentage" shall be 100% minus (the number of full time jobs existing (i) at the Project and (ii) otherwise within the State in connection with the Project as of the Reporting Date divided by the Minimum Job Requirement).
  - c. "Investment Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Investment Maintenance Shortfall Percentage as of the Reporting Date, of the relevant year.
  - d. "Investment Maintenance Shortfall Percentage" shall be 100% minus (the Company's Capital Investment remaining at the Project as of the Reporting Date (without any adjustment for depreciation or write downs), divided by the Investment Requirement).

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Execution Version

- 12.3.f If required, repayments are due and payable on the applicable Due Date and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.
- 12.4 "Due Date," shall be defined as the 90th day following the expiration of the 12 month cure period as set forth in section 12.5 below.
- 12.5 Provisions for Cure. In the event that the Company defaults in job creation or investment obligations thereby creating a Job Creation Default and/or an Investment Creation Default, and the Company has received notice that a repayment shall be required, then commencing upon the date of such notice, the Company shall have an additional twelve (12) month period to cure such shortfall in new, full-time jobs or investment (during which time, any requirement for repayment shall be held in abeyance) and the date for repayment shall be so extended. In the event that the Company then cures such shortfall (i.e. creates additional new, full-time jobs or makes additional capital investment equal to the amount of the shortfall) within the 12 month cure period, the Company shall be deemed to have met such Minimum Job Requirement or Investment Requirement and no repayment pursuant to such cured default shall be due or owing.
- 12.6 Provisions for Repayments. In the event that the Company fails to cure a job creation or investment shortfall for which it had notice and opportunity to cure, or the Company has received proper written notice that it has failed to maintain the jobs or investment, then the Company shall tender such amount of repayment by the Due Date, which shall be deemed to commence upon the expiration of the 12 month cure period. The Company shall only pay the actual amount as calculated pursuant to the terms hereof and no additional payments or interest shall be due in connection with any such repayment.
- 13.0 Amendments. If (a) the Investment Requirement is not met or (b) the total number of full time jobs created is less than the Minimum Job Requirement or (c) the investment is not made or the jobs are not created within the Investment Achievement Period or the Job Achievement Period, as applicable, the Company may provide detailed documentation that a good faith effort was made to achieve both the Minimum Job Requirement and the Investment Requirement. To the extent that extenuating circumstances prevent the Company from fulfilling its commitments contained herein, and the Grantee and the Council, in their sole discretion, acknowledge such circumstances in writing, this Agreement may be modified in writing by mutual agreement of the parties.
- 14.0 Representations and Warranties. The Company hereby makes the following representations and warranties and acknowledges and agrees that such representations and warranties have been material to the Council's decision to enter into this Agreement and further agrees that each representation and warranty is true, accurate and complete in all material respects as of the date hereof and will remain true and correct in all material respects throughout the term of this Agreement.

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- 14.1 Good Standing. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, has the power and authority to own its property and to carry on its business in each jurisdiction in which it does business, and has registered for and is duly qualified to conduct business in, and is in good standing in, the State of South Carolina.
- 14.2 Authority and Compliance. The Company has full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided herein. No consent or approval of any public authority or other third party is required as a condition to the validity of the Company's obligation under this Agreement, and the Company is in compliance with all laws and regulatory requirements to which it is subject.
- 14.3 No Conflicting Agreement. There is no charter, bylaw, stock provision, partnership agreement or other document pertaining to the organization, power or authority of the Company and no provision of any existing agreement, mortgage, deed of trust, indenture or contract binding on the Company or affecting the Company's property which would materially conflict with or in any way prevent the Company from executing, delivering, or carrying out the terms of this Agreement.
- 14.4 Litigation. To the best of the Company's knowledge, there is no proceeding involving the Company pending or threatened before any court or governmental authority, agency or arbitration authority which if adversely decided would materially affect the Company's ability to meet its obligations under this Agreement and conduct its operations at the Project.
- 14.5 Compliance with Laws. To the best of its knowledge, the Company is in material compliance with all federal, state and local laws, regulations and governmental requirements including, but not limited to, environmental laws and the applicable federal and state laws, executive orders and regulations concerning discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability, applicable to its facility including without limitation the property, business operations, employees, and transactions thereof.
- 14.6 Binding Agreement. Each part of this Agreement is a legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights. This Agreement has been signed by an authorized Company representative and such signature is recognized by the Company as legally binding.
- 15.0 Indemnification. The Company agrees to defend, indemnify, and hold the Council and the Grantee harmless from and against the costs of any litigation (including reasonable attorney's fees) arising from this Agreement or the Assistance provided by the Council to the Grantee for the direct or indirect benefit of the Company, except to the extent such litigation is caused by the negligence or willful misconduct of the Council or the Grantee;

provided, however, that the Company's liability pursuant to this indemnification provision shall be limited by the provisions of the SC Tort Claims Act, Section 15-78-10 et seq. of the S.C. Code of Laws, 1976, as amended (the "Code"), to the extent those provisions provide full or limited immunity to governmental parties from third party claims and prohibit recovery of punitive or exemplary damages. In the event that any litigation is threatened or arises from this Agreement or the Assistance provided hereunder, then, to the extent that the Company is required to defend, indemnify or hold the Council or the Grantee harmless, such obligations of the Company shall be conditioned upon the Company's right to appear in such litigation and to select and direct the legal counsel engaged in the defense of the Council or the Grantee, as applicable. This provision shall survive the termination of this Agreement for any claim arising during the term of the Agreement.

- 16.0 Assignability. The terms of this Agreement may not be assigned to another entity without the written permission of the Grantee and the Council, which consent shall not be unreasonably withheld, except that the Company may assign this Agreement to an Affiliate without the prior written consent of the Grantee and the Council provided that the Company notifies the Grantee and the Council within thirty (30) days following such assignment. In such case, the Affiliate shall assume all of the Company's rights and responsibilities hereunder and the Company shall be fully released herefrom.
- 17.0 Notification. The Company must notify the Grantee and the Council if there are any changes in the status of the Company that will materially impact or alter the Company's ability to comply with this Agreement. All notices required or otherwise provided under this Agreement shall be deemed made upon mailing by first class mail, postage prepaid, and addressed to the other party as follows:

Notices to the Council shall be sent to:

Ms. Dale Culbreth  
Senior Program Manager, CCED Programs  
South Carolina Coordinating Council for Economic Development  
South Carolina Department of Commerce  
1201 Main Street, Suite 1600  
Columbia, SC 29201

Notices to Grantee shall be sent to:

Mr. R. Carlisle Roddey  
Supervisor  
Chester County  
Post Office Box 580  
Chester, South Carolina 29706

SL

With a copy to:

Ms. Joan Elizabeth Winters  
Winters Law Firm  
105 Main Street  
Chester, South Carolina 29706

Notices to Company shall be sent to:

[REDACTED]  
Giti Tire Holdings (USA), Ltd.  
c/o 10404 Sixth Street  
Rancho Cucamonga, CA 91730

With a copy to:

[REDACTED]  
[REDACTED]  
[REDACTED]

- 18.0 Severability. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.
- 19.0 Governing Law and Jurisdiction. This Agreement is made under and shall be construed in accordance with the laws of the State, without regard to conflicts of laws principles. By executing this Agreement, the Company also agrees to submit to the jurisdiction of the courts of the State for all matters arising hereunder. In the event of a dispute, the Council shall have standing to represent the State.
- 20.0 Freedom of Information. The Company understands and agrees that (i) the Grantee and the Council are each a public body within the meaning of the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the Code (the "FOIA Act"); (ii) the Grantee and the Council are each required to comply with the provisions of the FOIA Act by disclosing certain public records upon receipt of a written request; and (iii) after execution of this Agreement, this Agreement and all documents and other information incidental to this Agreement are subject to disclosure pursuant to Sections 30-4-40(a)(9) and 30-4-40(a)(5) of the Code upon request. The Grantee and the Council each agree to utilize applicable exemptions of FOIA Act located in Section 30-4-40 of the Code to the maximum extent authorized by law to protect confidential information related to this Agreement and the Project. If disclosure of this Agreement and related information is required, pursuant to Section 30-4-40(a)(5)(c) of the Code, the Council agrees to redact any information in this Agreement or any documents incidental thereto that is clearly marked by the Company as confidential and proprietary and has been provided to the Council for economic development or contract negotiation purposes. However, the Grantee, the Council, and their respective members, employees, and staff shall not be

liable for the inadvertent release of any information contained in the Agreement or any other documents related to the Project, absent gross negligence or willful misconduct.

To the extent an action at law or equity is brought to require the disclosure of any information related to the Project, the Council reserves the right to include the Company in such action and the Company hereby agrees to bear all costs associated with defending such action.

21.0 Events of Default. During the term of this Agreement, the following shall constitute events of default by the Company under this Agreement:

- 21.1 any representation or warranty made by the Company herein that is false or misleading in any material respect at the time made;
- 21.2 failure of the Company to comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCP funds and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.3 failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.4 the Company's consenting to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or admitting in writing its inability to pay its debts generally as they come due, or making a general assignment for the benefit of creditors;
- 21.5 the Company's filing a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any United States bankruptcy laws (as now or hereafter in effect), or, by voluntary petition, answering or consenting, seeking relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;
- 21.6 the entry of an order, judgment, or decree in any proceeding by any court of competent jurisdiction appointing, without the consent of the Company, a

Execution Version

receiver, trustee or liquidator of the Company or of any substantial part of its property, or sequestering any substantial part of its property, and any such order, judgment or decree of appointment or sequestration remaining in force undismitted, unstayed, or unvacated for a period of 180 days after the date of entry thereof; or

21.7 a petition against the Company in a proceeding under applicable United States bankruptcy laws or other United States insolvency laws as now or hereafter in effect is filed and a final, non-appealable order for relief is entered in connection therewith, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Company, any court of competent jurisdiction shall assume jurisdiction, custody or control of it or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 180 days.

22.0 Remedies. If any such event of default shall occur and be continuing, then the Council shall, to the extent permitted by law and without notice of any kind to the Company (except to the extent required by law or as expressly required herein), seek to enforce the rights of the Council hereunder by exercising any or all of the following remedies:

22.1 Refrain from extending any further assistance or Grant funds until such time as the Company is in full compliance with the terms and conditions of this Agreement;

22.2 Require repayment of all or a portion of the funds expended under this Agreement;

22.3 Cancel, terminate or suspend this Agreement; or

22.4 Take such other reasonable action as may be necessary to protect its rights and interests hereunder.

23.0 Additional Remedial Provisions.

23.1 No remedy herein conferred or reserved to the Council is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. A waiver of any particular breach or default under any provision hereof shall not operate as a waiver of any further or subsequent breach or default under such provision. The remedies herein provided are cumulative and not exclusive of any remedies provided by law, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Council to exercise any



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remedy reserved to them in this Agreement, it shall not be necessary to give notice other than such notice as may be required in this Agreement.

23.2 Neither the Orantee nor the Council shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company if an event of default shall occur hereunder.

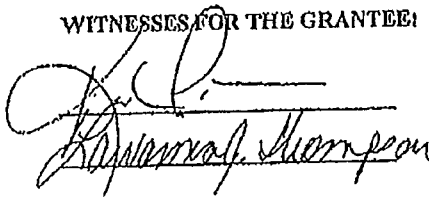
24.0 Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

[Signatures on following page]

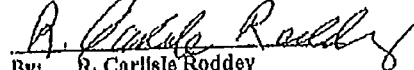
Execution Version

IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed by their authorized representative under seal to be effective as of the date first written above.

WITNESSES FOR THE GRANTEE: GRANTEE:

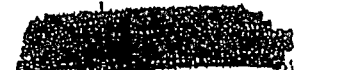
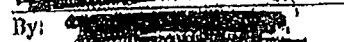
  
R. Carlisle Roddey

CHESTER COUNTY, SOUTH CAROLINA

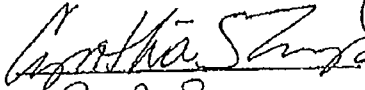
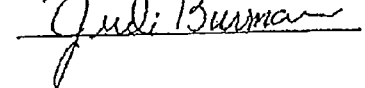
By:   
R. Carlisle Roddey  
County Supervisor

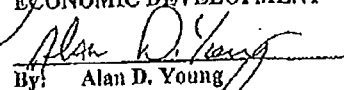
WITNESSES FOR THE COMPANY: GITI TIRE HOLDINGS (USA) LTD.



  
By:   
Its: 

WITNESSES FOR THE COUNCIL: COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT

  
  
Judi Burman

  
By: Alan D. Young  
Executive Director

**FIRST AMENDMENT TO THE PERFORMANCE AGREEMENT  
(GOVERNOR'S CLOSING FUND ASSISTANCE)**

This First Amendment to the Performance Agreement (the "First Amendment") is made to be effective the 4<sup>th</sup> day of September, 2014 by and among Chester County, a political subdivision of the state of South Carolina and hereinafter referred to as the "Grantee", Gilt Tire Holdings (USA), Ltd., hereinafter referred to as the "Company", and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council";

**WITNESSETH**

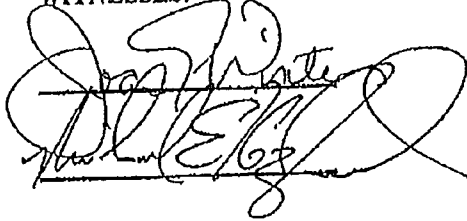
That for and in consideration of the mutual covenants and agreements herein contained, the above parties do hereby agree as follows:

- 1.0 **First Amendment to Agreement.** The parties recognize that this First Amendment modifies and amends the Performance Agreement ("Agreement") made and entered into by the parties to be effective the 5<sup>th</sup> day of June, 2014. The terms of the Agreement that are not inconsistent with the terms contained herein shall remain in full force and effect, and any such terms that are not inconsistent shall be incorporated herein for all practical purposes.
- 2.0 On September 4, 2014, the Council awarded an additional Five Hundred Fifty Thousand and No/100 Dollars (\$550,000) in grant funds so that the total Grant amount set forth in Section 1.0 of the Agreement is hereby increased to a total amount of Thirty Six Million Three Hundred Twenty Five Thousand and No/100 Dollars (\$36,325,000).

*(Signature Page Follows)*

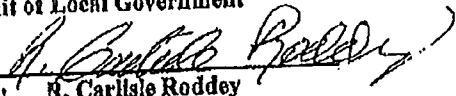
IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:

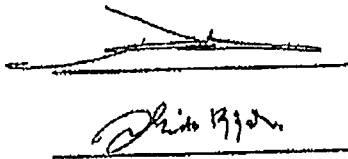


GRANTEE:

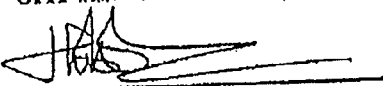
Chester County  
Unit of Local Government

By:   
Its: R. Carlisle Roddey  
County Supervisor

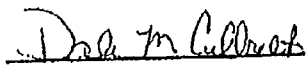
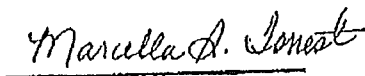
WITNESSES:



GITI TIRE HOLDINGS (USA) LTD.

  
By: Sylvia Soerhjadl  
Its: Corporate Secretary

WITNESSES:

  
Don M. Culbert  
  
Marcella D. Lonest

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

  
By: Alan D. Young  
Its: Executive Director

IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

GRANTEE:

Chester County  
Unit of Local Government

By: R. Carlisle Roddey  
Its: County Supervisor

WITNESSES:

\_\_\_\_\_  
*Oliver Bjork*  
\_\_\_\_\_

GITI TIRE HOLDINGS (USA) LTD.

*[Signature]*  
By: Sylvia Soerljadi  
Its: Corporate Secretary

WITNESSES:

*Dale M. Culbert*  
\_\_\_\_\_  
*Marcella A. Jones*  
\_\_\_\_\_

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

*Alan D. Young*  
By: Alan D. Young  
Its: Executive Director



# **EXHIBIT C**

SCBO Advertisement

## EXHIBIT 1

Date: July 2, 2014

**CONSTRUCTION**

Project Name: Site Preparation for Giti Tire Manufacturing, (USA) Ltd.  
 Project Number: 14134-0012  
 Project Location: I-77 Mega Site on the West side of I-77 between Exits 62 and 65 in Chester County,  
 South Carolina

Bid Security Required: (check one)

- ☐ Yes  
☒ No

Performance Bond Required: (check one)

- ☐ Yes  
☒ No

Payment Bond Required: (check one)

- ☐ Yes  
☒ No

Description of Project: Contractor's Prequalification Statement to be submitted to Alliance Consulting Engineers, Inc. no later than July 24, 2014 at 4:00 P.M.; Short list to be selected and invitation for Bids issued on August 1, 2014; Bids due to Alliance Consulting Engineers, Inc. on August 24, 2014 at 4:00 P.M.; Commence Construction in September 2014; Complete building pad preparation by December 2014.

Related Experience: Must have completed five (5) projects within the last five (5) years as a Contractor, with at least one (1) having an Earthwork value of \$2,500,000 or more. Based on the Contractor Prequalification Statements, Giti Tire Manufacturing (USA), Ltd. will select up to five (5) Contractors for the invitation to bid on the Site Preparation for the project.

Scope of Work: The scope of work includes construction of up to 3.6 million square feet of building pad to rough subgrade elevations, loop road, storm drainage basins with associated piping and structures, and erosion and sediment control.

Construction Cost Range:

Architect/Engineer:

- Firm: Alliance Consulting Engineers, Inc.
- Contact Person:
- Address: Post Office Box 8147, Columbia, SC 29202
- Telephone: 803-779-2078
- Fax: 803-779-2079
- E-mail:

Plans On File At: (Indicate city/cities where plans are available next to plan room)

- AGC:
- Dodge:
- Other:

Plans May Be Obtained From: Contractor Prequalification Packages will be available on July 7<sup>th</sup>, 2014 from Alliance Consulting Engineers, Inc. Completed Statement of Qualifications (SOQ) must be submitted to Alliance Consulting Engineers, Inc.'s office no later than 4:00 P.M. on July 24, 2014. All questions should be submitted in writing with reference to Site Preparation for Giti Tire Manufacturing (USA), Ltd. in the subject line no later than July 17, 2014 at 5:00 P.M.

Plan Deposit: N/A Refundable?: N/A

Pre-Bid Conf./Site Visit: (check one)

- ☒ No  
☐ Mandatory  
☐ Non-mandatory

Pre-Bid Date/Time (if applicable): N/A

Place: N/A

SOQ Opening Date/Time: Not to be publicly opened

Place: N/A

Agency/Owner: Giti Tire Manufacturing (USA), Ltd.

Name &amp; Title of Agency Coordinator:

- Address: Post Office Box 8147, Columbia, SC 29202 1201 Main St., Suite 2020, Columbia, SC 29201



- Telephone: 803-779-2078
- Fax: 803-779-2079
- E-mail:

Hand Deliver SOQ To: 1201 Main Street, Suite 2020, Columbia, South Carolina 29201  
 Mail SOQ To: Via FedEx or UPS: 1201 Main Street, Suite 2020, Columbia, South Carolina 29201

- 
- Advertisements for Monday's publication are due by Noon on Friday / Advertisements for Thursday's publication are due by Noon on Wednesday.
  - To submit: Fill out form, save to your computer, then attach to an email to [mlford@mmo.sc.gov](mailto:mlford@mmo.sc.gov) or fax to (803)737-0850. Emailed ads are confirmed by return email, faxed ads are not.
  - Please check your ad in SCBO after it appears to make sure it has been included, & that the information contained in it is correct.
  - You can leave out or add any information you wish. One way to do this is to unprotect this document. If you want to be able to tab through the fields, you must have enforcement of the protection start again once you make your change(s). Saved items are necessary to creating a SCBO ad & should be included.
  - Buyers: You can download this form to your computer to a SCBO folder, & fill in the parts that repeat every time you fill out the form, like agency address, buyer's name, etc.. Then each time you open it, do a "save as," rename the file, & place it in your SCBO folder. This way you always start with a partially filled out form.

# EXHIBIT D

## Richardson's Contractor Prequalification Statement

**Contractor Prequalification Statement**  
**Site Preparation for GIT Tire Manufacturing, (USA) Ltd. in**  
**Chester County, South Carolina**

1. Name of Company: Richardson Construction Company  
 Street Address: 6806 Monticello Road  
Columbia SC 29203  
 City State Zip  
☒ Main Office ☐ Regional Office ☐ Branch Office  
 Mailing Address: P.O. Box 3489  
Columbia SC 29230  
 City State Zip
2. Contact: Bobby Richardson Phone: 803 786-9741 Cell: 803 380-2505 E-mail: brichardson@richdirt.com  
 Contact: Joseph Richardson Phone: 803 786-9741 Cell: 803 530-3138 E-mail: jrichardson@richdirt.com  
 Contact: John Brock Phone: 803 786-9741 Cell: 803 609-3194 E-mail: jbrock@richdirt.com  
 Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ E-mail: \_\_\_\_\_
3. Year Company Started: 1973 Type of Company: ☒ Corp. ☐ Partnership  
☐ Proprietor ☐ Joint Venture
4. State of Incorporation: South Carolina Date of Incorporation: 8/29/73  
 Contractor's SC License Number: 010851 Expiration: 10/31/14  
 State Sales Tax Registration Number: 040891936 (Attach list if needed)  
 State Unemployment Insurance Number: 094321 (Attach list if needed) Federal ID Number: 57-0558664
5. List the corporate officers, partners, proprietors, members and shareholders of more than 5% of the stock of your company:
- | Name                           | Year of Birth | Position              | Percent Owned |
|--------------------------------|---------------|-----------------------|---------------|
| a. <u>Robert M. Richardson</u> | <u>1963</u>   | <u>President</u>      | <u>51</u>     |
| b. <u>R. Joseph Richardson</u> | <u>1979</u>   | <u>Vice President</u> | <u>49</u>     |
| c. <u>John T. Brock</u>        | <u>1959</u>   | <u>Secretary</u>      |               |
| d. _____                       |               |                       |               |
| e. _____                       |               |                       |               |
6. Under what names has your Company Operated?:  
N/A
7. How many people does your Company presently employ?  
 Corporate Office: 5 Field Personnel: 40
8. How many people did your Company employ on average for the last 3 years?  
 Corporate Office: 5 Field Personnel: 35

9. Has your Company ever failed to complete a project timely and had to pay liquidated damages? ☐ Yes ☒ No

If yes, please explain:

10. Have any of the Owners, Officers or Major Stockholders of your Company ever been indicted or convicted of any felony or other criminal conduct? ☐ Yes ☒ No

If yes, please explain:

11. Has your Company ever had a claim made against it for improper, delayed, defective non-compliant work or failure to meet warranty obligations? ☐ Yes ☒ No

If yes, please explain:

12. Is your Company or any of its owners, officers, or major shareholders currently involved in any arbitration or litigation? ☐ Yes ☒ No

If yes, please explain:

13. Does your Company have any outstanding judgments or claims against it? ☐ Yes ☒ No

If yes, please explain:

14. Please list any litigation brought against your Company in the past five (5) years asserting that you failed to make payments to anyone.

15. List the states in which you have performed work: Georgia Tennessee North Carolina and South Carolina

16. List Unions which you have agreement with:

| Local Number | Union Name | Agreement Expiration |
|--------------|------------|----------------------|
| N/A          |            |                      |
|              |            |                      |
|              |            |                      |
|              |            |                      |

17. Indicate the size of project you are most competitive in performing:

|                                              |                                                              |
|----------------------------------------------|--------------------------------------------------------------|
| Under \$100,000 <input type="checkbox"/>     | \$500,000-\$1,000,000 <input type="checkbox"/>               |
| \$100,000-\$200,000 <input type="checkbox"/> | \$1,000,000-\$4,000,000 <input checked="" type="checkbox"/>  |
| \$200,000-\$500,000 <input type="checkbox"/> | Greater than \$4,000,000 <input checked="" type="checkbox"/> |

18. Check all types of projects in which your Company has worked (check all that apply):

- |                                 |                                     |                                 |                                     |
|---------------------------------|-------------------------------------|---------------------------------|-------------------------------------|
| A. Government                   | <input checked="" type="checkbox"/> | F. Renovations                  | <input type="checkbox"/>            |
| B. Food processing              | <input checked="" type="checkbox"/> | G. Industrial Building          | <input checked="" type="checkbox"/> |
| C. Distribution Centers         | <input checked="" type="checkbox"/> | H. High Tech/Laboratories       | <input checked="" type="checkbox"/> |
| D. Offices                      | <input checked="" type="checkbox"/> | I. Design Build / Design Assist | <input checked="" type="checkbox"/> |
| E. Truck Maintenance Facilities | <input checked="" type="checkbox"/> |                                 |                                     |

19. List the types of work you normally perform with your own employees: Demolition, erosion control, grading, excavation, clearing and grubbing, stormwater piping, & stone base.

20. What percentage of the company's work is normally subcontracted? 16%

21. What types of work do you normally subcontract? Paving and grassing, water and sewer, curb & concrete

22. What is the largest contract your Company has completed?  
Amount: 88.6 mil Year: 2007 Project name and scope: Google - Turn key site package

23. What is the largest dollar volume job you expect to do during this year?  
Amount: 10 mil Project name and scope: \_\_\_\_\_

24. What is the typical dollar range of projects under contract with your firm? 3.5 mil

25. What was the average annual volume of earthwork in cubic yards over the past five (5) years?

- |                                         |                                         |
|-----------------------------------------|-----------------------------------------|
| 1. <u>1 mil / 2013</u> Yr./Cubic Yds.   | 4. <u>2.1 mil / 2010</u> Yr./Cubic Yds. |
| 2. <u>1.2 mil / 2012</u> Yr./Cubic Yds. | 5. <u>5 mil / 2009</u> Yr./Cubic Yds.   |
| 3. <u>2 mil / 2011</u> Yr./Cubic Yds.   |                                         |

26. Is your Company willing to mobilize within 48 hours of Notice of Award? ☒ Yes ☐ No  
Provide an example project in which your Company did so: Lowe's Distribution in Garysburg, NC  
Project Reference: \_\_\_\_\_

27. Is your Company willing to work nights and weekends to meet required construction timeline? ☒ Yes ☐ No  
Provide an example project in which your Company did so: Google server farm, Lenoir, NC  
Project Reference: John Culbreath (B.P. Barber) currently w/Thomas & Hutton

28. Is your Company willing to work in inclement weather to meet required construction timeline? ☐ Yes ☐ No  
Provide an example project in which your Company did so: Lowe's Distribution Center, Garysburg, NC  
Project Reference: Bridgestone/Firestone Aiken, SC

29. List projects completed by your company with building pads of 1,500,000 Square Feet or greater.

1. Dollar General Distribution Facility Jonesville, SO
2. Sterilita Clinton, SO
3. Google Server Farm, Lenoir NC
4. Bridgestone-Firestone Aiken, SO
5. Lowe's Distribution Center, Garysburg NC

ACE Project No.: 14134-0012  
Date: July 1, 2014

30. List projects in which your company moved more than One (1) Million Cubic Yards of dirt in 6 months.

1. Google in Lenoir, NC
2. Berlitz in Clinton, SC
3. Dollar General Distribution Facility in Jonesville, SC
4. Anderson County Airport, Anderson, SC
5. \_\_\_\_\_

31. Provide a list of equipment that is owned by the Contractor and is available for this project.

32. Provide a list of equipment that will be purchased, leased or rented for this project.

Attach a copy of your latest audited financial statement; (Your financial statement will be treated confidentially).

33. If the attached financial statement is not for the identical Company named above, explain the relationship and financial responsibility of the company whose financial statement is provided:

34. Name of Bank: Wells Fargo  
Address: 1441 Main Street, 16th Floor Columbia, SC 29202  
Phone: 803 622-4387 Contact Person: Marvin Robinson  
How is credit secured? owners  
What is Company's Dunn & Bradstreet Number: 06-7000-186 D&B Rating: 2A1  
Pay Record: \_\_\_\_\_ Date of Rating: 6/2014  
Remarks: 4 mil line of credit secured by personal financials

35. Bonding Company:

Name of Surety \_\_\_\_\_ Key Contact Person / Phone \_\_\_\_\_  
A. Liberty WD Morris: 803 733-5284  
B. Bonding Capacity: Per Job 60 mil Aggregate: 75 mil  
Date of Last Bond: 04/2014 Amount: 27,000  
Bond Rate: 1 %  
Please list the persons or entities who provide indemnification to your Surety: \_\_\_\_\_

36. List three (3) of your major suppliers:

- A. Name: Vulcan Materials  
Address: 545 Georgia Street Columbia, SC 29201  
Contact: Elio Seymour Telephone: 803 240-2858
- B. Name: Truck Supply  
Address: 1270 Buckner Road Columbia, SC 29203  
Contact: Donna Telephone: 803 754-9022
- C. Name: HD Waterworks  
Address: 914 Chris Drive W. Columbia, SC 29180  
Contact: Steven Carter Telephone: 803 809-4822

ACE Project No.: 14134-0012  
Date: July 1, 2014

37. List three (3) subcontractors that you do business with:

- A. Name: Hamdon, Inc.  
 Address: P.O. Box 36 Lugoff, SC 29078  
 Contact: Jeff Hamdon Telephone: 803 438-1078
- B. Name: LAD Construction, CO  
 Address: P.O. Box 2634 W. Columbia, SC 29171  
 Contact: Alton Hutto Telephone: 803 600-8295
- C. Name: S&T Grading  
 Address: 1848 Old Orangeburg Road, Lexington, SC 29072  
 Contact: Mike Sturkie Telephone: 803 513-8890

38. Trade Association Memberships: AGC, SCEDA, NCEDA

39. List local or national accredited training programs in which you participate (craft or management training):  
OSHA, MSHA, Red Cross, SWWPP, CPR, Competent Person Training

40. List key office personnel and field supervisors (attach resumes):

|    | Name              | Position | Year of Birth | Years Experience | Previous Employer  |
|----|-------------------|----------|---------------|------------------|--------------------|
| A. | Bobby Richardson  |          | 1953          | 43               | N/A                |
| B. | Joseph Richardson |          | 1979          | 16               | N/A                |
| C. | John T. Brock     |          | 1958          | 16               | Bose Corporation   |
| D. | Phil Metts        |          | 1981          | 34               | Bartley Logging    |
| E. | Gerry Kelly       |          | 1988          | 27.5             | Sharma Contractors |

General Remarks:

41. Please list your Company's Workers' compensation Interstate/Intrastate Experience Modification Rate for the most recent three years. (Attach a copy of your Insurance carrier or state fund (on their letterhead) verifying the EMR data.)

Interstate (Yr/Rate)      2013/86      2011/93

42. Please use the three (3) most recent years OSHA No. 300/200 Log to fill in the number of cases for each of the following categories: (attach a copy of your last three years of OSHA 300/200 logs.)

| Year                                                                     | 2013 | 2012 | 2011 |
|--------------------------------------------------------------------------|------|------|------|
| A. Number of fatalities<br>(Total Columns 1 & 8)                         | 0    | 0    | 0    |
| B. Number of lost and restricted work day cases<br>(Total Columns 2 & 9) | 0    | 1    | 1    |
| C. Number of medical treatment cases<br>(Total Columns 6 & 13)           | 0    | 0    | 0    |
| D. Number of medical treatment cases                                     |      |      |      |

ACE Project No.: 14134-0012  
 Date: July 1, 2014



|                                     |        |        |        |
|-------------------------------------|--------|--------|--------|
| (Total Columns 3 & 10)              | 0      | 0      | 0      |
| E. Employee Hours Worked            | 87,198 | 83,049 | 68,428 |
| F. OSHA Recordable Incidence Rate   | 0      | 2.41   | 3.01   |
| G. OSHA Lost Workday Incidence Rate | 0      | 2.41   | 3.01   |

Note: Items in parentheses come from your OSHA 200 Log  
 Employee Hours Worked = total number of hours worked during the year by all employees.  
 Recordable Incidence Rate = [(A+B+C) x 200,000/Employee Hours Worked]  
 Lost Workday Incidence Rate = [D x 200,000/Employee Hours Worked]

43. How many OSHA violations has your Company received the last three (3) years?

(Yr = violations)

1 = 2013

Any willful OSHA violations? ☐ Yes ☒ No

Please provide a brief description of the violation(s); use additional paper if necessary.

Any employee deaths in the past three (3) years? ☐ Yes ☒ No

Please provide a brief description of the circumstances:

44. Do you have a qualified person responsible for safety within your Company? ☒ Yes ☐ No

Please describe his / her qualifications:

45. Does a qualified person do safety inspections on all of your projects? ☒ Yes ☐ No

Frequency: Weekly

46. Do you have a written Company Safety Policy and Program and will you provide copies if requested? ☒ Yes  
☐ No

47. Does your Company have a substance abuse policy? ☒ Yes ☐ No

If yes, please check which are included in the policy:

☒ Pre-hire / Initial Employment

☒ Cause

☒ Post Accident / Incident

☒ Random

☒ Periodic

48. Do you have a return to work / light duty program? ☐ Yes ☒ No

If yes, please describe:

49. Have you ever implemented 100% fall protection? ☒ Yes ☐ No

ACE Project No.: 14134-0012  
 Date: July 1, 2014

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If yes, please describe:

50. Do you require documented safety meetings for your employees? Indicate which and how often.

|                        |                                                                     |                                                   |
|------------------------|---------------------------------------------------------------------|---------------------------------------------------|
| Field Supervisors      | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency <u>Weekly</u>                           |
| New Hires              | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency <u>Weekly</u>                           |
| Employees              | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency <u>Weekly</u>                           |
| Subcontractors/Vendors | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency <u>Weekly</u> Yes to subs no to vendors |

51. Does your Company provide safety training for all employees? ☒ Yes ☐ No

If yes, please describe:

52. Do you have office representatives (not directly involved in the project) who will visit and audit the project for safety?

☒ Yes ☐ No Frequency weekly

53. Does your Company set annual safety goals? ☐ Yes ☐ No

If yes, please describe:

54. Does your Company have a program recognizing your employees for safety performance excellence?

☐ Yes ☒ No

55. Does your Company have a disciplinary program in place for safety violations?

☒ Yes ☐ No

56. Does your Company review the safety management system of your subcontractors?

☒ Yes ☐ No

57. Does your Company conduct accident / incident investigations?

☒ Yes ☐ No

I HEREBY CERTIFY that as a duly authorized representative of Richardson Construction Co.

(bidder), the information provided is to the best of my knowledge accurate and that failure to provide accurate information will result in disqualification of my bid.

R. Joseph Richardson  
Signature

R. Joseph Richardson

Name (Please Print)

Vice-President

Title

7-18-14

Date

John T. Brock

Notary Public for South Carolina

My Commission Expires: 06-08-16

ACE Project No.: 14134-0012  
Date: July 1, 2014



# EXHIBIT E

Affidavit of Robert M. Richardson

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

**AFFIDAVIT OF  
ROBERT M. RICHARDSON**

ROBERT M. RICHARDSON, after being duly sworn, personally appears before and deposes and says that:

1. Affiant's name is Robert M. Richardson.
2. Affiant makes this Affidavit in support of Plaintiff Richardson Construction Company's ("Richardson") Application and Motion for a Temporary Injunction.
3. Affiant is the President of Richardson.
4. Affiant has personal knowledge of the information set forth in this Affidavit.
5. Richardson is a corporation organized and existing under the laws of the State of South Carolina and is headquartered in Columbia, South Carolina.
6. Richardson is a contractor specializing in large site construction, with an emphasis on mass earthmoving and grading of commercial and industrial facilities with compressed schedules.
7. On behalf of Richardson, Richardson's attorneys submitted a Freedom of Information Act ("FOIA") request to the South Carolina Department of Commerce on November 12, 2014, seeking documents showing the source of funds for the construction of the Giti Tire

Manufacturing (USA) Ltd. tire manufacturing plant in Chester County, South Carolina ("Project"), and documents relating to the prequalification and ranking of potential bidders for the mass site work for the Project.

8. On November 18, 2014, Richardson received documents from the South Carolina Department of Commerce in response to its November 12, 2014, FOIA request. The Grant Award Agreement, Performance Agreement, and October 29, 2014, email and attachment from Stephen Brown, PE, attached to the Memorandum in Support of Richardson's Application and Motion for a Temporary Injunction as Exhibits A, B, and G, were among the documents produced by the South Carolina Department of Commerce in response to the November 12, 2014, FOIA request.

9. Richardson regularly performs mass site work services for large construction projects.

10. Richardson has the capacity to quickly move large quantities of dirt and grade sites for construction in extremely compressed periods of time.

11. Upon Information and belief, the demands of the Project, in terms of volume of work and time to complete it, would not represent even a challenge to Richardson's abilities. We have previously done more volume of work, in more difficult conditions, in considerably less time. The Project is not a *special* project necessitating the employment of a contractor with more equipment or personnel than we have.

12. Upon information and belief, the Giti project at issue, will cost less than \$20,000,000.00.

13. Richardson has a \$75,000,000 bonding capacity.

14. Richardson owns a fleet of over 200 pieces of heavy earthmoving equipment, has

no indebtedness, and maintains a three to one receivables to payables ratio and an extremely strong cash position. Richardson would not need to buy or rent anything it does not currently own to perform the Giti project.

15. Richardson has performed more than forty site work projects within the past five years as a contractor.

16. Richardson has performed more than five site work projects within the past five years having an Earthwork value of \$2,500,000 or more.

17. Richardson has taken over site work projects running behind schedule and in regulatory trouble and successfully completed them ahead of schedule. One such project taken over by Richardson was a project the same size as the Giti Project, which Richardson took over from one of the companies invited to bid the Giti Project.

18. Performing the mass site work services for the Project would generate a large amount of revenue for Richardson.

19. Performing the mass site work services for the Project would allow Richardson to employ significant portion of its equipment and personnel, in a single location, and efficiently generate revenue to cover its operating costs and overhead expenses

20. Performing the mass site work services for the Project would very likely generate a large amount of profit for Richardson.

21. Richardson would gain a great deal of professional prestige and experience by performing the mass site work services for the Project.

22. Upon information and belief, Richardson would enjoy an enhanced professional reputation if it were to perform the mass site work services for the Project.

23. Richardson would greatly benefit in the form of revenue, profit, experience, and

enhanced professional reputation from performing the mass site work services for the Project.

24. Projects of the magnitude, and consequently potential benefit, of the Project are relatively infrequent in the region, so the Project constitutes an important and significant opportunity for Richardson.

25. Richardson is willing and eager to perform the mass site work services for the Project.

26. If a mass site work services contract for the Project were awarded to another contractor without Richardson having submitted a bid for the Project that is duly considered, Richardson, and all other similarly situated contractors, would suffer irreparable harm because Richardson would forever miss the opportunity to obtain the profit, revenue, experience, and enhanced reputation that would result from performing the work for the Project.

27. Richardson can prepare and submit a bid for the Project within five days of receiving the bid package.

28. I am informed and believe that, if permitted to submit a bid for the Project, Richardson will likely submit a lower bid than those of the companies that have been allowed to submit bids, thereby saving the State of South Carolina, Chester County, and Giti large sums of money. Richardson has previously underbid the same companies that have been permitted to submit bids for the Projects.

29. I am informed and believe that preventing highly qualified bidders, such as Richardson, from bidding the Project cannot benefit anyone but the short listed bidders who were invited, exclusively, to bid the job in this current improper procurement solicitation.

30. At this point in time, prior to bids being opened, those short listed bidders' numbers have not been revealed to anyone and therefore their competitive position will not be

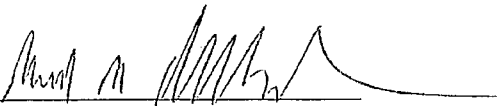
compromised or prejudiced if the bids are returned to bidders, and the project re-bid.

31. I have personally re-bid dozens of jobs in my career due to failed procurements such as this one. Re-bids to perfect the procurement process are ordinary and customary in the construction industry, especially in the realm of government contracts.

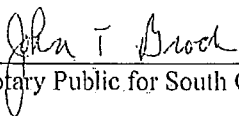
32. Given the fact that Richardson can submit a bid within five days of receiving the bid package, as well as the fact that the winter weather and holiday season is approaching, allowing Richardson to submit a bid will not necessarily delay the Project.

33. If applicable state rules for bidding are followed, the Project could still commence in early January, which is the anticipated start date that Chester County repeatedly and publicly stated.

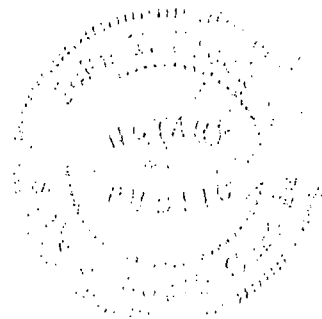
**[Signature on Following Page]**

  
Robert M. Richardson

Sworn to and Subscribed before Me  
This 10<sup>th</sup> Day of December 2014.

  
Notary Public for South Carolina

My Commission Expires: 05/08/2016





# EXHIBIT F

Response of Chester County  
Chief Procurement Officer



CHESTER COUNTY

RESPONSE OF CHESTER COUNTY CHIEF PROCUREMENT OFFICER

FACTS

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On July 2, 2014, Alliance Consulting Engineers, Inc. ("Alliance"), acting on behalf of GITI, published an advertisement in the newsletter of the South Carolina Business One Stop ("SCBO"), seeking Contractor's Prequalification Statements for the Project. (Exhibit 2). The advertisement was very clear that a 'short list' would be selected and that GITI would "select up to five (5) Contractors for the invitation to bid...". Between the time of the advertisement for Statements of Qualifications and the receipt of the Statements, Alliance was replaced by Gresham Smith as the Project Engineer ("Engineer"). Gresham Smith continues on at this time as the Project Engineer. Mr. Clyde Fish, GITI's Director of Projects and Manufacturing ("Mr. Fish"), along with three (3) other Engineers, evaluated the Statements of Qualification and ranked the applicants. All applicants who were based in South Carolina were automatically awarded ten (10) points, including Richardson. The scoring was predicated upon the Statements of Qualification Information regarding previous work strength, safety records, number of employees, etc. All applicants completed the same questionnaire. At the review, Mr. Fish actually ranked Richardson higher than all but two of the other applicants, but the other three reviewers did not rank Richardson with enough points for the company to be in the top five selected to bid. (Exhibit 3).

Notice of the decision to not allow Richardson to bid was received on October 30, 2014, and a timely protest was filed by Richardson.

#### **RESPONSE TO ARGUMENT**

Richardson's initial argument speaks to several venues for procurement since the documents governing the grant had not yet been received by Richardson. Since most of that argument looks to the alleged violations of the South Carolina Consolidated Procurement Code

("SCCPC), S.C. Code §11-35-10, et seq., we would deny those allegations stated in the original Protest under Section I and Section II as being baseless and Irrelevant.

S.C. Code §11-35-20(e) requires local government to adopt its own procurement laws and practices. This has been done by Chester County, adopted in July 2003, and amended over the years. In its Supplement Protest, Richardson does acknowledge that the Chester County Procurement Policy is the governing document. In the Protest submitted to Chester County<sup>1</sup>, Richardson argues that he must be permitted to submit a bid because prequalification is prohibited under the County Policy. The Chester County Solicitation Outline, §9.0 reserves the right for Chester County to determine minimum qualifications and thus limit the number of bidders. (Exhibit 4). The statement of the desire to "foster competition among suppliers" does not indicate any requirement for the County to accept each and every vendor who wishes to bid on a project, and the County does have the right to determine the number of qualified bids it wishes to accept. It would be unreasonable and is not required under its Procurement Policy to prohibit the County from prequalifying potential bidders and to create a short list for projects. The prequalification process utilized by the County is not prohibited by the Chester County Procurement Policy, the governing document for the Project.

The Supplement to Protest filed by Richardson states that the Project is subject to the County Procurement Policy. The County agrees. The argument put forth by Richardson however is that the monies provided by the State of South Carolina are not a 'grant' but

<sup>1</sup> In the interest of perfecting its appeal and to the best of the knowledge of Chester County, Richardson did file several different Protest documents to the SC Department of Commerce, SC State Engineer, GITI Tire Manufacturing (USA), and Chester County. Chester County can only respond to those allegations it is aware of and reserves the right to provide supplemental response(s) when additional allegations are presented to the County.

constitute an 'award' which is subject to the SCCPC. The argument that the Project is subject to both in their entirety is without merit. Richardson argues that the issuance of these funds is an 'award' and not a grant. Richardson submitted the document that defines these funds, the Grant Award Agreement. Under Section 1(f), Grant is defined as, "the dollars committed by the Council to the Grantee for the Project." Throughout this document, the recipient of the money is referred to as the "Grantee," a telling distinction. To attempt to separate the concept of 'awarding a grant' and an 'award' is overreaching and without bases. It is clear from the governing documents that this was a grant, which is not subject to the SCCPC by operation of law.

The County Procurement Policy has a provision for protests. Richardson did file a timely protest and supplemented that protest just recently. Section 18.0 provides that:

*Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest in writing within fifteen (15) days of the date of issue of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of contract shall protest within fifteen (15) days of the date notification of award is posted in accordance with this code. A protest shall be in writing, submitted to the Contracts and Procurement Director, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided (§11-35-4210). Direct all correspondence to Director Contracts and Procurement, P.O. Box 580, Chester South Carolina 29706. (Emphasis added).*

The Chester Procurement Policy adopts the protest procedure under S.C. Code §11-35-4210 but clearly does not authorize the use of the entire Code. The resolution process adopted by the County and utilized by the State speaks to prospective bidders who may be aggrieved, indicating the existence of applicants to bid, or contractors who are involved with a prequalification process. The protest process under §11-35-4210(2)(A) has been followed by

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Richardson. In a letter dated November 18, 2014, Richardson demanded a hearing stating that it had a right to same. The Code section adopted by Chester County for resolution of protests does not require a hearing. It does require a reasonable effort to mediate the matter at hand.<sup>2</sup> The County did request some alternative resolution from Richardson, with no response to date. Hearing nothing, the County conducted an Administrative Review as required under §11-35-4210(4) and a Decision is required at the conclusion of the Review. This response constitutes the Decision, as summarized below of that Review.

Richardson has stated that a stay of bid proceedings is in order under the circumstances, in fact, required under the County Policy. The County would respectfully disagree that there is a requirement for a stay. The County Policy does not speak to a 'stay' under protest, but does adopt the State resolution process. Section 11-35-4210(7) states that:

*In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer... (Emphasis added).*

This section is very clear that it applies to the State of South Carolina and not Chester County. Even if it did apply to the County, the Chief Procurement Officer has the discretion to solicit or award the contract in question without further delay if that is being done in the best interest of the State. If it is to be argued that the County has stepped into the shoes of the State under this Code section, it can also be argued that this option is further available to the County. This project is under significant time constraints as to Project start times and Project completion times, or the grant money is forfeited. Certainly the best interest of the County and the State

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<sup>2</sup> S.C. Code §11-35-4210(3)

are better served by moving forward. A stay of any length of time is detrimental to that interest.

#### SUMMARY

Chester County believes that it followed its procedures with clarity, notification and reasonableness to all involved. It is not in violation of any State Code or its own Procurement Policy. Richardson was rated as number 7 in the list of potential bidders. He has argued that he "just wants to bid" but certainly if permitted, this waives the original requirement to make the short list of bidders and the County would have to permit every potential bidder the opportunity to bid. If one were to analyze the scoring, it is clear that Richardson would have been scored even less than he did if you removed the 'free' ten points given to applicants for being a South Carolina entity.

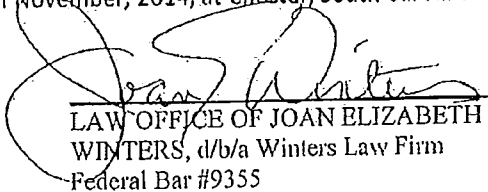
The County is willing to stay the process for ten (10) days beginning Monday, November 24, 2014, in accordance with the resolution process. It is unlikely that a stay will be granted for any longer than this due to the tight constraints of the Grant Agreement. The County is unsure as to what this ten day period will change but in the interest of alternative resolution will work with the parties.

It is important to note the role of Chester County in this process. The County's procurement policy was adopted by GITI. An outside engineering firm conducted the process. The State deposited the Grant money with the County for disbursement under strict guidelines of the State. None of these activities is within the direct control or purview of Chester County.



Other than a ten-day stay, commencing on Monday, November 24, 2014, the County would respectfully deny the relief sought by Richardson as it believes the claims by Richardson are without merit.

Respectfully submitted this 24<sup>th</sup> day of November, 2014, at Chester, South Carolina.



LAW OFFICE OF JOAN ELIZABETH  
WINTERS, d/b/a Winters Law Firm  
Federal Bar #9355

105 Main Street  
Chester, South Carolina 29706  
803-581-8190  
803-581-8243 facsimile  
**ATTORNEY FOR CHESTER COUNTY**

SOUTH CAROLINA COORDINATING COUNCIL  
FOR ECONOMIC DEVELOPMENT  
1201 Main Street, Suite 1600  
Columbia, South Carolina 29201

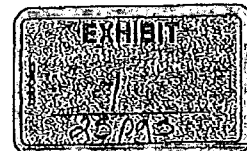
GRANT AWARD AGREEMENT

In accordance with the provisions of Section 12-28-2910 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), the South Carolina Coordinating Council for Economic Development, hereinafter called the Council, does commit and grant to Chester County, hereinafter called the Grantee, the sum in dollars set forth in Section 3 below for the Project identified in Section 2 below. The acceptance of this Agreement creates a contract between the Council and the Grantee, legally binding the Grantee to carry out the activities and obligations set forth in the Application and this Agreement, all in accordance with the terms and conditions set forth in this Agreement and in any appendices attached hereto and any other documents or conditions referred to herein.

**Section 1: DEFINITIONS:**

- (a) Agreement means this Grant Award Agreement.
- (b) Application means the grant application forms submitted by the Grantee to the Council.
- (c) Company means the economic development corporate entity that is identified in the Application.
- (d) Contractor means a private contractor who undertakes all or part of the Project.
- (e) Council means the South Carolina Coordinating Council for Economic Development (CCED).
- (f) Grant means the dollars committed by the Council to the Grantee for the Project.
- (g) Grantee means the unit of government designated for the Grant and set forth above.
- (h) Project means the project identified and described in the Application.
- (i) State means the State of South Carolina and any agencies or offices thereof.

**Section 2: PROJECT DESCRIPTION:** Funds will be used for land acquisition and real property improvements for Oil The Holdings (USA) Ltd (Project Summer), which will invest \$560 million and create 1,700 new jobs. This project has been approved by the Council and is included by reference as Coordinating Council Grant #C-14-2371 - Land Acquisition and Real Property Improvements.



**Section 3: AWARD AMOUNT:** The Council hereby commits an amount not to exceed \$35,775,000, to be used only for the Project and related costs, as described in the Application. Eligible costs that can be paid from the Grant shall include only those costs expressly set forth in the Application.

**3.1: Approval of Third Party Contracts:** The Grantee must submit all proposed agreements with third party contractors engaged to perform work within the scope of the Grant to the Council prior to finalizing those agreements.

**3.2: Notice to Proceed:** The Grantee must obtain from the Council written notice to proceed prior to incurring costs against the Grant. If the Grantee or the Company needs to incur expenses prior to the Council's notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

**3.3: Engineering Costs:** Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.

**3.4. Administrative Fees:** The Grantee may not charge an administration fee in connection with the Grant.

**Section 4: AMENDMENTS:** Any changes in the scope of work of the Project, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.

**Section 5: PERFORMANCE:** By acceptance of this Grant, the Grantee warrants that it will complete or cause to be completed the Project as described in the approved Application, including any approved amendments appended hereto. Should Grantee fail to cause the completion of all or part of the Project, the Council shall be entitled to reimbursement from the Grantee of any Grant funds that were received by the Grantee for any work that was not performed.

**Section 6: FUNDING UNDERRUNS:** The Grantee agrees that it will return surplus Grant funds that result from project cost underruns.

**Section 7: AUDIT:** The Grantee must include an examination and accounting of the expenditures of Grant funds in its first annual audit following the completion of the Project, and submit a copy of the audit report to the Council. The Grantee agrees that it will reimburse the Council for unauthorized and unwarranted expenditures disclosed in the audit, if so directed by the Council. Upon request of the Council, the Grantee shall make available, and cause the Company to make available, for audit and inspection by the Council and its representatives all the books, records, files and other documents relating to any matters pertaining to the Project, the Application or this Agreement. The Grantee shall have prepared an audit of Grant funds received under this Agreement that adheres to the following audit requirements, whichever is applicable:

- (a) Generally accepted auditing standards established by the American Institute of Certified Public Accountants, (AICPA);

- (b) The General Accounting Office (GAO) Standards for Audits of Governmental Organizations, Programs, Activities, and Functions, latest revised edition (Yellow Book);

**Section 8: CONTRACTOR SELECTION:** If the Grantee desires to select a Contractor to undertake all or any part of the scope of work of the Project, then the selection of that Contractor by the Grantee must follow applicable procurement laws, regulations and guidelines. The Grantee warrants that it will adhere to all such applicable procurement laws, regulations and guidelines in the selection of the Contractor. In addition, the Grantee may not award contracts to any Contractors who are ineligible to receive contracts under any applicable laws or regulations of the State.

Upon request, the Grantee must make available to the Grantee's auditor, the Council, and its representatives, and the public Grantee's records and other documentation of the procurement process and any sole source justification. If the Grantee fails to adhere to procurement procedures required by law, the Council may call for repayment by the Grantee for Grant funds that were expended in a disallowable manner.

A Contractor must represent that it has, or will secure at its own expense, all personnel required in the performance of the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with the Council or the Grantee.

All of the services required to complete the Project will be performed by the Grantee and/or a Contractor, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

The Grantee and/or a Contractor shall be liable for and pay all taxes required by local, state, or federal governments, which may include, but not be limited to, social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Council to or for the benefit of the Grantee and/or a Contractor or his employee or agents by reason of this Agreement.

The Grantee warrants that it will enforce all terms and conditions of this Agreement upon the Company and any Contractors.

**Section 9: CONFIDENTIAL INFORMATION:** Any reports, information, data, or other documentation given to or prepared or assembled by the Grantee under this Agreement which the Council requests to be kept confidential shall not be made available to any individual or organization by the Grantee without the prior written approval of the Council.

**Section 10: DISCRIMINATION:** The Grantee shall not, and shall impose on its Contractors the obligation not to, discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The Grantee and any Contractor shall be required to take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, age, sex, national origin, or handicap.

**Section 11: INTEREST OF CERTAIN FEDERAL OR STATE OFFICIALS:** No elected or appointed State or federal official shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**Section 12: INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANTEE, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS:** No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or this Agreement. The Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Project and this Agreement this provision prohibiting such interest.

**Section 13: PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION:** The assistance and Grant funds provided under this Agreement shall not be used for the payment of any bonus or commission for the purpose of obtaining the Council's approval of the Application, or the Council's approval of any applications for additional assistance or Grant funds, or any other approval or concurrence of the Council required under this Agreement. However, the payment from Grant funds of reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Project costs.

**Section 14: MAINTENANCE OF RECORDS:** The Grantee shall retain records for property purchased totally or partially with Grant funds for a period of three years after its final disposition. The Grantee shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.

**Section 15: MBE OBLIGATION:** The Grantee agrees to use its best efforts to ensure that minority business enterprises, as identified in Article 21, Sections 11-35-5210 through 11-35-5270 of the Code have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with funds provided under this Agreement. In this regard, the Grantee and its Contractors shall take all necessary and reasonable steps to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

**Section 16: PROJECT COMPLETION:** The Grantee must complete, or cause to be completed, the portion of the Project to be funded in whole or in part with Grant funds within 18 months of the Date of Award of this Grant. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.

**Section 17: SANCTIONS:** If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the Council may take, in addition to

any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

**Section 18: APPLICABLE LAW:** This Agreement is made under and shall be construed in accordance with the laws of the State of South Carolina, without regard to conflicts of laws principles. The federal and state courts within the State of South Carolina shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement.

**Section 19: APPROPRIATIONS:** Notwithstanding any other provisions of this Agreement, the parties hereto agree that the Grant funds awarded hereunder are payable by appropriations from the State. In the event sufficient appropriations, grants, and monies are not made available to the Council to pay the compensation and expenses hereunder for any fiscal year, this Agreement shall terminate without further obligation of the Council. In such event, the Council shall certify to the Grantee the fact that sufficient funds have not been made available to the Council to meet the obligations of this Agreement; and such written certification shall be conclusive upon the parties.

**Section 20: COPYRIGHT:** No material produced in whole or in part under this Grant shall be subject to copyright in the United States or in any other country. The Council shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Grant.

**Section 21: TERMS AND CONDITIONS:** The Council reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Council and any other agency of the State.

**Section 22: REPORTING REQUIREMENTS:** The Grantee agrees to submit quarterly progress reports that provide a status update and identification of any material issues affecting the Project. Progress reports will be due on the first day of the month beginning with the first full month after commencement of the Project. Failure to submit progress reports will be subject to sanctions identified in Section 17 herein. The Grantee further agrees to complete and submit all quarterly progress reports and any other reports, in such form and according to such schedule, to the extent not specified herein, as may be required by the Council.

**Section 23: PROJECT START-UP:** The project must begin within three months of the Date of Award of the Grant. If the Grantee or the Company does not begin the Project within three months of the Date of Award of the Grant, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds provided to Grantee and terminate this Agreement. For purposes of this section, Grantee or the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.

**Section 24: LIABILITY:** The Grantee understands that Council accepts no liability for the Project nor any responsibility other than its agreement to provide the Grantee the Grant funds for the Project in the amount shown in Section 3, insofar as such funds are expended in accordance with the terms and conditions of this Agreement. During the

term of the Grant, the Grantee shall maintain tort liability insurance or shall have a self-funded and excess liability program with coverage amounts sufficient to meet the limits set forth under the SC Torts Claims Act in Section 15-78-120, as may be amended.

**Section 25: PAYMENT:** The Grantee must submit to the Council a certified request for payment for work that is documented by the Grantee. The Council, upon its approval of the request for payment, shall forward such requests to the Finance Department of the South Carolina Department of Commerce. Payments are issued from the Comptroller General's office. Payment requests should be submitted to the Council no more than once a month.

The Grantee will certify, to the best of its knowledge, information and belief, that the work on the Project for which reimbursement is requested has been completed in accordance with the terms and conditions of this Agreement, and that the payment request is due and payable from Grant funds.

All requests for payment must be certified as valid expenditures by an official representative of the Grantee. Invoices and canceled checks supporting the Grantee's request for reimbursement from Grant funds must be kept on file and be available for inspection at any time.

**Section 26: RESPONSIBILITY FOR MAINTENANCE:** Maintenance of new roads and other improvements to the Grantee's or Company's right of way and/or property is the sole responsibility of the Grantee. Neither the Council nor the State shall have any responsibility whatsoever to maintain such roads and other improvements relating to the Project. The Grantee may assign this responsibility to any agreeable party.

**Section 27: SEVERABILITY:** If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

This Agreement shall become effective, as of the Date of Award, upon receipt of one copy of this Agreement which have been signed in the space provided below. The agreement must have original signatures and must be returned within fifteen days from the Date.

10.5.14  
Date of Award

Alan D. Young  
Alan D. Young  
Executive Director  
Coordinating Council for Economic Development

ACCEPTANCE FOR THE GRANTEE

P. Carlisle Roddey  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

7/01/14  
Date

P. CARLISLE RODDEY County Supervisor  
Typed Name and Title of Authorized Official

ATTEST:

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate



Nikki R. Haley  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

Robert M. Hill III  
Secretary

## ADDENDUM TO ORIGINAL CONTRACT

GHI Tire Holdings (USA), Ltd. ~ #C-14-2371

CHESTER COUNTY

ORIGINAL CONTRACT AMOUNT  
APPROVED 06-05-14

\$35,775,000

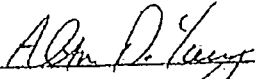
ADDITIONAL FUNDING  
APPROVED 09-04-2014

\$550,000

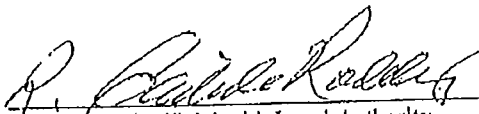
Funds will be used for additional costs anticipated for land acquisition, site preparation, infrastructure, and other real property improvements..

REVISED TOTAL CONTRACT AMOUNT

\$36,325,000

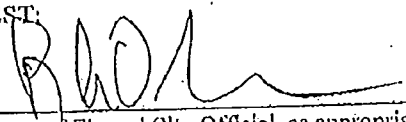
  
Alan D. Young  
Coordinating Council for Economic Development

9.4.14  
Date

  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

9/12/14  
Date

ATTEST:

  
Signature of Elected City Official, as appropriate

1201 Main Street, Suite 1600, Columbia, SC 20201  
Tel: (803) 737-0400 • Fax: (803) 737-0410 • [www.sceconomico.com](http://www.sceconomico.com)

**PERFORMANCE AGREEMENT**  
**(Governor's Closing Fund Assistance)**  
**C-14-2371**

This Performance Agreement ("Agreement") is made to be effective the 5<sup>th</sup> day of June, 2014, by and among Chester County, a political subdivision of the State of South Carolina and hereinafter referred to as the "Grantee," Giti Tire Holdings (USA) Ltd., hereinafter referred to as the "Company," and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council."

**WITNESETH**

That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the above parties do hereby agree as follows:

- 1.0 Agreement. The parties recognize that this Agreement is based on a Governor's Closing Fund ("OCF") grant award being awarded or made by the Council to the Grantee in an amount not to exceed Thirty Five Million Seven Hundred and Seventy Five Thousand and No/100 Dollars (\$35,775,000) (the "Grant") for the purposes identified in Section 3.0 herein.
- 2.0 Project Description. The Company will establish and equip tire manufacturing plants and support operations of a corporate facility, a research and development facility and a distribution facility through the acquisition, construction and purchase of certain land, buildings, furnishings, apparatuses and equipment in the County, hereinafter referred to as the "Project."
- 3.0 Use of Proceeds. The Grantee will use the Grant to assist the Company with the costs of site acquisition, site preparation, site infrastructure improvements and other related capital expenditures for real property improvements at the Project site in Chester County (collectively, "Grant Project"). To the extent that grant funds are disbursed under this Agreement such disbursed funds are, hereinafter referred to as the "Assistance." Any changes in the scope of the Grant Project, the costs of which are to be reimbursed through Grant funds must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.
- 3.1 Disbursement of Funds. No funds will be disbursed until the approval of expenditures, through submission of invoices and proof of payment to the Grantee; provided, however, that funds will be disbursed within thirty (30) days from the date that invoices for eligible expenditures and sufficient proof of payment are delivered to the Grantee.
- 3.2 Third Party Contracts. The Company must submit all agreements with third party contractors engaged to perform work within the scope of the Grant to the

Council prior to or simultaneously with the submission of invoices relating to that agreement.

- 3.3 Notice to Proceed. The Company obtained from the Council a written conditional notice to proceed dated May 8, 2014 (the "Notice to Proceed") prior to incurring any costs to be reimbursed from the Grant. Any expenditure made prior to the date of the Notice to Proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.
- 3.4 Engineering Costs. Reimbursement of engineering costs for professional services will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.
- 3.5 Compliance with GCF Requirements. The Grantee and the Company must comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCF funds.
- 3.6 Funding Overruns. The Company agrees that it will commit and provide monies from its own resources for cost overruns that are required to complete the Grant Project. This Agreement creates no obligation on the part of the Grantee, the Council or the State of South Carolina (the "State") to provide funds for the cost overruns.
- 3.7 Use of Grant Funds. The Company must complete the Grant Project within twenty-four (24) months of the date hereof. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion, and such extensions shall not be unreasonably withheld.
- 4.0 Project Start-Up. The Project must begin within six months of the date hereof. Subject to the extensions provided in this Section 4.0, if the Company does not begin the Project within six months of the date hereof, the Council reserves the right to rescind the Grant and terminate this Agreement. For purposes of this section, the Project shall have begun once the Company has acquired the Project site in Chester County. Notwithstanding the foregoing, if the due diligence undertaken in connection with the purchase of the Project site reveals a condition on or affecting the Project site that cannot be resolved to the Company's satisfaction within six months of the date hereof and will delay the purchase beyond six months of the date hereof, such time period will automatically be extended an additional three months. Further time period extensions may also be requested by the Company and will be subject to approval by the Council, which will not be unreasonably withheld.
- 5.0 Contractor Selection. If the Company desires to select a private contractor to undertake all or any part of the scope of work of any portion of the Grant Project, then the selection

of that contractor by the Company must take place in accordance with the Chester County procurement ordinance.

- 6.0 **Investment Requirement.** The Company agrees to make and maintain, or cause to be made and maintained through an Affiliate (as defined below), capital investment of not less than Five Hundred Million and No/Dollars (\$500,000,000), above and beyond any reimbursement from the Grant or any additional State grants, for land, building and machinery and equipment at the Project (the "Investment Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that it has satisfied the Investment Requirement (the "Investment Achievement Period"). The Company's investment may be verified at the request of the Grantee or the Council. For purposes of this Agreement, "Affiliate" means any corporation, partnership, or other entity that controls or is controlled by or is under common control at any level with the Company.
- 7.0 **Job Creation Requirement.** The Company agrees to create and maintain, or cause to be created and maintained through an Affiliate, no fewer than 1,700 new, full-time jobs at the Project and otherwise within the State (the "Job Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that it has satisfied the Job Requirement (the "Job Achievement Period"). Notwithstanding the foregoing, for purposes of this Agreement, no employee of the Company or an Affiliate at a retail store will be counted towards the Job Requirement.
- 8.0 **Maintenance Periods/Terms.**
- 8.1 Once the Company has satisfied the Investment Requirement within the Investment Achievement Period, the Company agrees to maintain the Investment Requirement at the Project for a period beginning on the first date following the expiration of the Investment Achievement Period and ending on the fifth anniversary thereof (the "Investment Maintenance Period").
- 8.2 Once the Company has satisfied the Job Requirement within the Job Achievement Period, the Company agrees to maintain the Job Requirement at the Project for a period beginning on the first date following the expiration of the Job Achievement Period and ending on the fifth anniversary thereof (the "Job Maintenance Period").
- 9.0 **Access to Records.** The Company agrees to provide the Grantee and the Council reasonable access to its facilities to substantiate the employment and investment committed by this Agreement. This covenant shall continue until the Company is notified in writing by the Council that the Job Requirement and the Investment Requirement have each been met, the Investment Maintenance Period and the Job Maintenance Period have each expired, and funds have been expended and documented, or until repayment of the Assistance occurs in accordance with this Agreement.

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- 10.0 Compliance. The Council will review the hiring records and notify the Company in writing of its compliance or non-compliance with this Agreement. Upon written notification from the Council that both the Job Requirement and the Investment Requirement have been fulfilled and the Job Maintenance Period and the Investment Maintenance Period have each expired, this Agreement and all obligations of the Company, unless otherwise stated, hereunder shall terminate.
- 11.0 Maintenance of Records. The Company shall retain records for property purchased totally or partially with Grant funds for a period of three years after such purchase. The Company shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.
- 12.0 Repayment of Assistance. Failure to satisfy and maintain the Job Requirement and the Investment Requirement as set forth herein may result in repayment of all or a portion of the Grant funds expended. The Company will make re-payments to the Grantee, who will immediately notify and reimburse the Council.
- 12.1 Early Default. If the Company does not locate in the State or otherwise fails to invest at least \$150,000,000 and create at least 300 new, full-time jobs in the State by December 31, 2020, then Company shall be required to tender to the Grantee an amount equal to the amount of all Grant funds expended as of such date.
- 12.2 Achievement Period Requirements. On or before the expiration of the Investment Achievement Period, the investment by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than the Investment Requirement, and on or before the expiration of the Job Achievement Period, the number of new, full-time jobs created by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than 88% of the Job Requirement (the "Minimum Job Requirement"). If the Company does create jobs and/or make investment but fails to meet such requirements, the Company shall be required to repay a portion of the Grant funds expended, based on the actual number of jobs created and/or investment level achieved as of the last day of the Investment Achievement Period or the Job Achievement Period, as applicable. The repayment amount for failure to meet either the Investment Requirement or the Minimum Job Requirement will be calculated independently in accordance with the formulas provided below.
- 12.2.1 Shortfall in Investment. In the event that the Company fails to meet the Investment Requirement by the end of the Investment Achievement Period ("Investment Creation Default"), then, following written notice from the

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Council, the Company shall repay a portion of the Grant funds expended in accordance with the Investment Shortfall Formula below:

- a. The "Investment Shortfall Formula" is equal to 25% of the Grant funds expended multiplied by Investment Shortfall Percentage.
- b. The "Investment Shortfall Percentage" is equal to 100% minus (the Company's Capital Investment (as defined below), divided by \$500,000,000).

"Company's Capital Investment" is defined as all capital investment (under the International Financial Reporting Standards or under the General Accepted Accounting Principles) made by the Company both (i) at the Project and (ii) otherwise within the State in connection with the Project and in infrastructure connected to the Project, but excluding all costs reimbursed to the Company through the Grant and any additional State grants. Any reference to capital investment shall be deemed a reference to the gross capital investment value at the time of acquisition or investment and shall not reflect any depreciation or write down of the book value. In the event that the Company, under either its internal policies or under the rules of the International Financial Reporting Standards, does not treat a cost(s) as a capital, but such cost(s) could be treated as capital under the Generally Accepted Accounting Principles, then such cost(s) shall qualify for the purposes of this Agreement as a capital investment.

12.2.2. Shortfall in Job Creation. In the event that the Company fails to meet the Minimum Job Requirement by the end of the Job Achievement Period ("Job Creation Default"), then, following written notice from the Council, the Company shall repay a portion of the Grant funds expended in accordance with the Job Shortfall Formula below.

- a. The "Job Shortfall Formula" is defined as 25% of the Grant funds expended multiplied by Job Shortfall Percentage.
- b. The "Job Shortfall Percentage" is 100% minus (the actual number of new, full-time jobs created by the Company in South Carolina, divided by the Minimum Job Requirement).

12.2.3 If required, repayments are due and payable by the applicable Due Date (as defined below) and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.

12.2.4 If the Company satisfies the Job Requirement and the Investment Requirement by the end of the Job Achievement Period or the Investment

Achievement Period, as applicable, it shall not have any repayment obligations under this Section 12.2.

- 12.3 Maintenance Period Requirements. As of each and every Reporting Date (defined below), the Company's capital investment both at the Project and otherwise within the State in connection with the Project may not be less than the Investment Requirement, and the number of jobs retained by the Company both at the Project and otherwise within the State in connection with the Project may not be less than the Minimum Job Requirement. If the Company fails to maintain the Investment Requirement or the Minimum Job Requirement as of any of the Reporting Dates for any year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, the Company will be required to repay a portion of the Grant funds expended in accordance with the formulas below. The Company's repayment obligation shall be calculated on each anniversary of the end of the Investment Achievement Period or the Job Achievement Period, as applicable (each a "Reporting Date") utilizing the monthly average for the immediately preceding 12 months of new, full-time jobs created and existing and the monthly average for the immediately preceding 12 months of investment maintained during the applicable year of the Investment Maintenance Period or the Job Maintenance Period, as applicable. For purposes of determining the monthly average, the Company may, after the end of the first year of the Investment Maintenance Period or the Job Maintenance Period, select a reasonable day, in its sole discretion, upon which such jobs and investment will be determined on a monthly basis. Thereafter, that day in the month shall apply for each applicable year for the remainder of such Maintenance Period. The pro-rata repayment obligation for failure to maintain the Minimum Job Requirement or the Investment Requirement during each year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, will be calculated as follows:
- a. "Job Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Job Shortfall Percentage as of the Reporting Date, of the relevant year.
  - b. "Job Shortfall Percentage" shall be 100% minus (the number of full time jobs existing (i) at the Project and (ii) otherwise within the State in connection with the Project as of the Reporting Date divided by the Minimum Job Requirement).
  - c. "Investment Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Investment Maintenance Shortfall Percentage as of the Reporting Date, of the relevant year.
  - d. "Investment Maintenance Shortfall Percentage" shall be 100% minus (the Company's Capital Investment remaining at the Project as of the Reporting Date (without any adjustment for depreciation or write downs), divided by the Investment Requirement).

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- 12.3.1 If required, repayments are due and payable on the applicable Due Date and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.
- 12.4 "Due Date," shall be defined as the 90th day following the expiration of the 12 month cure period as set forth in section 12.5 below.
- 12.5 Provisions for Cure. In the event that the Company defaults in job creation or investment obligations thereby creating a Job Creation Default and/or an Investment Creation Default, and the Company has received notice that a repayment shall be required, then commencing upon the date of such notice, the Company shall have an additional twelve (12) month period to cure such shortfall in new, full-time jobs or investment (during which time, any requirement for repayment shall be held in abeyance) and the date for repayment shall be so extended. In the event that the Company then cures such shortfall (i.e. creates additional new, full-time jobs or makes additional capital investment equal to the amount of the shortfall) within the 12 month cure period, the Company shall be deemed to have met such Minimum Job Requirement or Investment Requirement and no repayment pursuant to such cured default shall be due or owing.
- 12.6 Provisions for Repayments. In the event that the Company fails to cure a job creation or investment shortfall for which it had notice and opportunity to cure, or the Company has received proper written notice that it has failed to maintain the jobs or investment, then the Company shall tender such amount of repayment by the Due Date, which shall be deemed to commence upon the expiration of the 12 month cure period. The Company shall only pay the actual amount as calculated pursuant to the terms hereof and no additional payments or interest shall be due in connection with any such repayment.
- 13.0 Amendments. If (a) the Investment Requirement is not met or (b) the total number of full time jobs created is less than the Minimum Job Requirement or (c) the investment is not made or the jobs are not created within the Investment Achievement Period or the Job Achievement Period, as applicable, the Company may provide detailed documentation that a good faith effort was made to achieve both the Minimum Job Requirement and the Investment Requirement. To the extent that extenuating circumstances prevent the Company from fulfilling its commitments contained herein, and the Grantee and the Council, in their sole discretion, acknowledge such circumstances in writing, this Agreement may be modified in writing by mutual agreement of the parties.
- 14.0 Representations and Warranties. The Company hereby makes the following representations and warranties and acknowledges and agrees that such representations and warranties have been material to the Council's decision to enter into this Agreement and further agrees that each representation and warranty is true, accurate and complete in all material respects as of the date hereof and will remain true and correct in all material respects throughout the term of this Agreement.



- 14.1 Good Standing. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, has the power and authority to own its property and to carry on its business in each jurisdiction in which it does business, and has registered for and is duly qualified to conduct business in, and is in good standing in, the State of South Carolina.
- 14.2 Authority and Compliance. The Company has full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided herein. No consent or approval of any public authority or other third party is required as a condition to the validity of the Company's obligation under this Agreement, and the Company is in compliance with all laws and regulatory requirements to which it is subject.
- 14.3 No Conflicting Agreement. There is no charter, bylaw, stock provision, partnership agreement or other document pertaining to the organization, power or authority of the Company and no provision of any existing agreement, mortgage, deed of trust, indenture or contract binding on the Company or affecting the Company's property which would materially conflict with or in any way prevent the Company from executing, delivering, or carrying out the terms of this Agreement.
- 14.4 Litigation. To the best of the Company's knowledge, there is no proceeding involving the Company pending or threatened before any court or governmental authority, agency or arbitration authority which if adversely decided would materially affect the Company's ability to meet its obligations under this Agreement and conduct its operations at the Project.
- 14.5 Compliance with Laws. To the best of its knowledge, the Company is in material compliance with all federal, state and local laws, regulations and governmental requirements including, but not limited to, environmental laws and the applicable federal and state laws, executive orders and regulations concerning discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability, applicable to its facility including without limitation the property, business operations, employees, and transactions thereof.
- 14.6 Binding Agreement. Each part of this Agreement is a legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights. This Agreement has been signed by an authorized Company representative and such signature is recognized by the Company as legally binding.
- 15.0 Indemnification. The Company agrees to defend, indemnify, and hold the Council and the Grantee harmless from and against the costs of any litigation (including reasonable attorney's fees) arising from this Agreement or the Assistance provided by the Council to the Grantee for the direct or indirect benefit of the Company, except to the extent such litigation is caused by the negligence or willful misconduct of the Council or the Grantee;

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provided, however, that the Company's liability pursuant to this indemnification provision shall be limited by the provisions of the SC Tort Claims Act, Section 15-78-10 et seq. of the S.C. Code of Laws, 1976, as amended (the "Code"), to the extent those provisions provide full or limited immunity to governmental parties from third party claims and prohibit recovery of punitive or exemplary damages. In the event that any litigation is threatened or arises from this Agreement or the Assistance provided hereunder, then, to the extent that the Company is required to defend, indemnify or hold the Council or the Grantee harmless, such obligations of the Company shall be conditioned upon the Company's right to appear in such litigation and to select and direct the legal counsel engaged in the defense of the Council or the Grantee, as applicable. This provision shall survive the termination of this Agreement for any claim arising during the term of the Agreement.

- 16.0 Assignability. The terms of this Agreement may not be assigned to another entity without the written permission of the Grantee and the Council, which consent shall not be unreasonably withheld, except that the Company may assign this Agreement to an Affiliate without the prior written consent of the Grantee and the Council provided that the Company notifies the Grantee and the Council within thirty (30) days following such assignment. In such case, the Affiliate shall assume all of the Company's rights and responsibilities hereunder and the Company shall be fully released herefrom.
- 17.0 Notification. The Company must notify the Grantee and the Council if there are any changes in the status of the Company that will materially impact or alter the Company's ability to comply with this Agreement. All notices required or otherwise provided under this Agreement shall be deemed made upon mailing by first class mail, postage prepaid, and addressed to the other party as follows:

Notices to the Council shall be sent to:

Ms. Dale Culbreth  
Senior Program Manager, CCED Programs  
South Carolina Coordinating Council for Economic Development  
South Carolina Department of Commerce  
1201 Main Street, Suite 1600  
Columbia, SC 29201

Notices to Grantee shall be sent to:

Mr. R. Carlisle Roddey  
Supervisor  
Chester County  
Post Office Box 580  
Chester, South Carolina 29706

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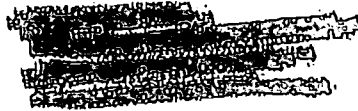
With a copy to:

Ms. Joan Elizabeth Winters  
Winters Law Firm  
105 Main Street  
Chester, South Carolina 29706

Notices to Company shall be sent to:

  
Gulf Tire Holdings (USA), Ltd.  
c/o 10404 Sixth Street  
Rancho Cucamonga, CA 91730

With a copy to:



- 18.0 Severability. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.
- 19.0 Governing Law and Jurisdiction. This Agreement is made under and shall be construed in accordance with the laws of the State, without regard to conflicts of laws principles. By executing this Agreement, the Company also agrees to submit to the jurisdiction of the courts of the State for all matters arising hereunder. In the event of a dispute, the Council shall have standing to represent the State.
- 20.0 Freedom of Information. The Company understands and agrees that (i) the Grantee and the Council are each a public body within the meaning of the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the Code (the "FOIA Act"); (ii) the Grantee and the Council are each required to comply with the provisions of the FOIA Act by disclosing certain public records upon receipt of a written request; and (iii) after execution of this Agreement, this Agreement and all documents and other information incidental to this Agreement are subject to disclosure pursuant to Sections 30-4-40(a)(9) and 30-4-40(a)(5) of the Code upon request. The Grantee and the Council each agree to utilize applicable exemptions of FOIA Act located in Section 30-4-40 of the Code to the maximum extent authorized by law to protect confidential information related to this Agreement and the Project. If disclosure of this Agreement and related information is required, pursuant to Section 30-4-40(a)(5)(c) of the Code, the Council agrees to redact any information in this Agreement or any documents incidental thereto that is clearly marked by the Company as confidential and proprietary and has been provided to the Council for economic development or contract negotiation purposes. However, the Grantee, the Council, and their respective members, employees, and staff shall not be

liable for the inadvertent release of any information contained in the Agreement or any other documents related to the Project, absent gross negligence or willful misconduct.

To the extent an action at law or equity is brought to require the disclosure of any information related to the Project, the Council reserves the right to include the Company in such action and the Company hereby agrees to bear all costs associated with defending such action.

21.0 Events of Default. During the term of this Agreement, the following shall constitute events of default by the Company under this Agreement:

- 21.1 any representation or warranty made by the Company herein that is false or misleading in any material respect at the time made;
- 21.2 failure of the Company to comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCP funds and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.3 failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.4 the Company's consenting to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or admitting in writing its liability to pay its debts generally as they come due, or making a general assignment for the benefit of creditors;
- 21.5 the Company's filing a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any United States bankruptcy laws (as now or hereafter in effect), or, by voluntary petition, answering or consenting, seeking relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;
- 21.6 the entry of an order, judgment, or decree in any proceeding by any court of competent jurisdiction appointing, without the consent of the Company, a

52

Execution Version

remedy reserved to them in this Agreement, it shall not be necessary to give notice other than such notice as may be required in this Agreement.

23.2 Neither the Grantee nor the Council shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company if an event of default shall occur hereunder.

24.0 Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

[Signatures on following page]

82

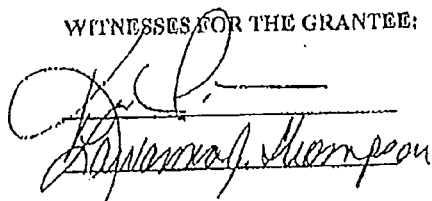
receiver, trustee or liquidator of the Company or of any substantial part of its property, or sequestering any substantial part of its property, and any such order, judgment or decree of appointment or sequestration remaining in force undismitted, unstayed, or unvacated for a period of 180 days after the date of entry thereof; or

- 21.7 a petition against the Company in a proceeding under applicable United States bankruptcy laws or other United States insolvency laws as now or hereafter in effect is filed and a final, non-appealable order for relief is entered in connection therewith, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Company, any court of competent jurisdiction shall assume jurisdiction, custody or control of it or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 180 days.
- 22.0 Remedies. If any such event of default shall occur and be continuing, then the Council shall, to the extent permitted by law and without notice of any kind to the Company (except to the extent required by law or as expressly required herein), seek to enforce the rights of the Council hereunder by exercising any or all of the following remedies:
- 22.1 Refrain from extending any further assistance or Grant funds until such time as the Company is in full compliance with the terms and conditions of this Agreement;
- 22.2 Require repayment of all or a portion of the funds expended under this Agreement;
- 22.3 Cancel, terminate or suspend this Agreement; or
- 22.4 Take such other reasonable action as may be necessary to protect its rights and interests hereunder.
- 23.0 Additional Remedial Provisions.
- 23.1 No remedy herein conferred or reserved to the Council is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. A waiver of any particular breach or default under any provision hereof shall not operate as a waiver of any further or subsequent breach or default under such provision. The remedies herein provided are cumulative and not exclusive of any remedies provided by law, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Council to exercise any

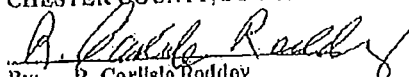
Execution Version

IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed by their authorized representative under seal to be effective as of the date first written above.

WITNESSES FOR THE GRANTEE: GRANTEE:

  
R. Carlisle Roddey

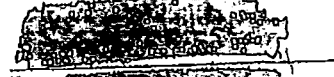
CHESTER COUNTY, SOUTH CAROLINA

By:   
R. Carlisle Roddey  
County Supervisor

WITNESSES FOR THE COMPANY:

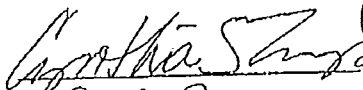
GITI TIRE HOLDINGS (USA) LTD.

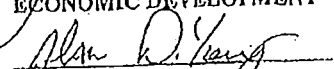


By:   
Its: 

WITNESSES FOR THE COUNCIL:

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

  
Judi Burman

By:   
Alan D. Young  
Executive Director

**FIRST AMENDMENT TO THE PERFORMANCE AGREEMENT  
(GOVERNOR'S CLOSING FUND ASSISTANCE)**

This First Amendment to the Performance Agreement (the "First Amendment") is made to be effective the 4<sup>th</sup> day of September, 2014 by and among Chester County, a political subdivision of the state of South Carolina and hereinafter referred to as the "Grantee", Giti Tire Holdings (USA), Ltd., hereinafter referred to as the "Company", and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council";

**WITNESSETH**

That for and in consideration of the mutual covenants and agreements herein contained, the above parties do hereby agree as follows:

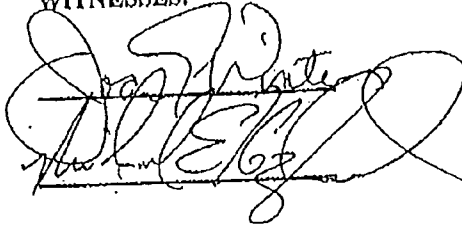
- 1.0 First Amendment to Agreement. The parties recognize that this First Amendment modifies and amends the Performance Agreement ("Agreement") made and entered into by the parties to be effective the 5<sup>th</sup> day of June, 2014. The terms of the Agreement that are not inconsistent with the terms contained herein shall remain in full force and effect, and any such terms that are not inconsistent shall be incorporated herein for all practical purposes.
- 2.0 On September 4, 2014, the Council awarded an additional Five Hundred Fifty Thousand and No/100 Dollars (\$550,000) in grant funds so that the total Grant amount set forth in Section 1.0 of the Agreement is hereby increased to a total amount of Thirty Six Million Three Hundred Twenty Five Thousand and No/100 Dollars (\$36,325,000).

*(Signature Page Follows)*



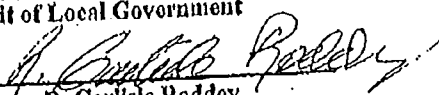
IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:

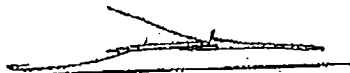
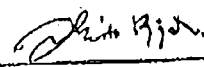
  
\_\_\_\_\_

GRANTEE:

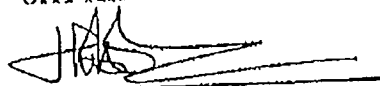
Chester County  
Unit of Local Government

  
By: R. Carlisle Roddey  
Its: County Supervisor

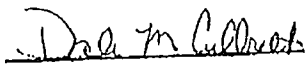
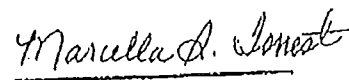
WITNESSES:

  
  
\_\_\_\_\_

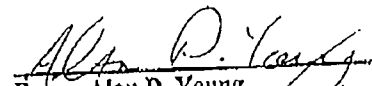
GITI TIRE HOLDINGS (USA) LTD.

  
By: Sylvia Soerhadi  
Its: Corporate Secretary

WITNESSES:

  
  
\_\_\_\_\_

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

  
By: Alan D. Young  
Its: Executive Director

IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

WITNESSES:

\_\_\_\_\_

*Glenn Bjork*

WITNESSES:

*Dale M. Culbert*

*Marcella A. Jensen*

GRANTEE:

Chester County  
Unit of Local Government

By: R. Carlisle Roddey  
Its: County Supervisor

GITI TIRE HOLDINGS (USA) LTD.

*[Signature]*

By: Sylvia Soorijadi  
Its: Corporate Secretary

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

*Alan D. Young*

By: Alan D. Young  
Its: Executive Director

## EXHIBIT 1

Date: July 2, 2014**CONSTRUCTION**

Project Name: Site Preparation for Giti Tire Manufacturing, (USA) Ltd.

Project Number: 14134-0012

Project Location: I-77 Mega Site on the West side of I-77 between Exits 62 and 65 in Chester County, South Carolina

Bid Security Required: (check one)

☐ Yes  
☒ No

Performance Bond Required: (check one)

☐ Yes  
☒ No

Payment Bond Required: (check one)

☐ Yes  
☒ No

Description of Project: Contractor's Prequalification Statement to be submitted to Alliance Consulting Engineers, Inc. no later than July 24, 2014 at 4:00 P.M.; Short list to be selected and invitation for Bids issued on August 1, 2014; Bids due to Alliance Consulting Engineers, Inc. on August 24, 2014 at 4:00 P.M.; Commence Construction in September 2014; Complete building pad preparation by December 2014.

Related Experience: Must have completed five (5) projects within the last five (5) years as a Contractor, with at least one (1) having an Earthwork value of \$2,500,000 or more. Based on the Contractor Prequalification Statements, Giti Tire Manufacturing (USA), Ltd. will select up to five (5) Contractors for the invitation to bid on the Site Preparation for the project.

Scope of Work: The scope of work includes construction of up to 3.6 million square feet of building pad to rough subgrade elevations, loop road, storm drainage basins with associated piping and structures, and erosion and sediment control.

Construction Cost Range:

Architect/Engineer:

- Firm: Alliance Consulting Engineers, Inc.
- Contact Person:
- Address: Post Office Box 8147, Columbia, SC 29202
- Telephone: 803-779-2078
- Fax: 803-779-2079
- E-mail:

Plans On File At: (Indicate city/office where plans are available next to plan room)

- AGC:
- Dodge:
- Other:

Plans May Be Obtained From: Contractor Prequalification Packages will be available on July 7<sup>th</sup>, 2014 from Alliance Consulting Engineers, Inc. Completed Statement of Qualifications (SOQ) must be submitted to Alliance Consulting Engineers, Inc.'s office no later than 4:00 P.M. on July 24, 2014. All questions should be submitted in writing with reference to Site Preparation for Giti Tire Manufacturing (USA), Ltd. in the subject line no later than July 17, 2014 at 5:00 P.M.

Plan Deposit: N/A Refundable?: N/A

Pre-Bid Conf./Site Visit: (check one)

☒ No  
☐ Mandatory  
☐ Non-mandatory

Pre-Bid Date/Time (if applicable): N/A

Place: N/A

SOQ Opening Date/Time: Not to be publicly opened

Place: N/A

Agency/Owner: Giti Tire Manufacturing (USA), Ltd.

Name &amp; Title of Agency Coordinator:

- Address: Post Office Box 8147, Columbia, SC 29202 1201 Main St., Suite 2020, Columbia, SC 29201



- Telephone: 803-779-2070
- Fax: 803-779-2079
- E-mail:

Hand Deliver SOQ To: 1201 Main Street, Suite 2020, Columbia, South Carolina 29201  
 Mail SOQ To: Via FedEx or UPS: 1201 Main Street, Suite 2020, Columbia, South Carolina 29201

- Advertisements for Monday's publication are due by Noon on Friday / Advertisements for Thursday's publication are due by Noon on Wednesday.
- To submit: Fill out form, save to your computer, then attach to an email to [milofsky@mma.io.gov](mailto:milofsky@mma.io.gov) or fax to (803)737-0060. Emailed ads are confirmed by return email, faxed ads are not.
- Please check your ad in SOBO after it appears to make sure it has been included, & that the information contained in it is correct.
- You can leave out or add any information you wish. One way to do this is to unprotect this document. If you want to be able to tab through the fields, you must have enforcement of the protection start again once you make your change(s). Saved files are necessary to creating a SOBO ad & should be included.
- Buyers: You can download this form to your computer to a SOBO folder, & fill in the parts that repeat every time you fill out the form, like agency address, buyer's name, etc. Then each time you open it, do a "save as," rename the file, & place it in your SOBO folder. This way you always start with a partially filled out form.

Gift Tire Mass Grading Contractor Prequalification Scoring Sheet

|               | Blythe | Boggs | Brad Cook | Brasel | Clary | Coogler | Earnhardt | Ernst | Glover | Hoopbaugh | J.R. | Landmark | Lineberger | Mazzella | Morgan | Phillips & | Richardson | Trangle |
|---------------|--------|-------|-----------|--------|-------|---------|-----------|-------|--------|-----------|------|----------|------------|----------|--------|------------|------------|---------|
| Score #1      | 70     | 41    | 72        | 49     | 72    | 43      | 61        | 79    | 64     | 61        | 45   | 54       | 40         | 28       | 31     | 75         | 83         | 60      |
| Score #2      | 58     | 27    | 74        | 44     | 81    | 45      | 35        | 79    | 56     | 61        | 46   | 57       | 36         | 26       | 35     | 75         | 80         | 62      |
| Score #3      | 73     | 45    | 68        | 53     | 75    | 48      | 61        | 80    | 65     | 61        | 48   | 73       | 41         | 29       | 75     | 82         | 65         | 64      |
| Score #4      | 77     | 49    | 75        | 56     | 75    | 50      | 64        | 38    | 61     | 62        | 50   | 73       | 41         | 25       | 75     | 80         | 66         | 65      |
| Total Score   | 276    | 162   | 289       | 202    | 308   | 186     | 221       | 320   | 246    | 245       | 189  | 257      | 180        | 108      | 316    | 314        | 274        | 251     |
| Rank by total |        |       | 5         |        | 4     |         |           | 1     |        |           |      |          |            |          | 2      | 3          |            |         |



**9.00 MINIMUM QUALIFICATIONS:**

- 9.01 The County reserves the right to determine whether Offerors have the minimum qualifications to complete the project. This determination by the County concerning Offeror qualifications shall be final.

**10.00 REJECTION OF OFFERS**

- 10.01 More than one proposal from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Any or all proposals will be rejected if there is reason to believe that collusion exists among the Offerors and no participants in such collusion will be considered in future proposals for the same work. Proposals in which the prices obviously are unbalanced will be rejected.

**11.00 EVALUATION OF PROPOSALS**

- 11.01 An evaluation committee will be established in order to review and evaluate all proposals submitted in response to this Request for Proposal. The committee shall conduct a preliminary evaluation of all responsive technical proposals. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the Director of Contracts and Procurement to make oral presentations to the Evaluation Committee. This committee will then conduct a final evaluation of the offerors. The Contract and Procurement Director shall then negotiate a proposed contract with the highest qualified offeror. At the time the proposed contract is negotiated, the offeror and the Evaluation Committee may negotiate any changes desired in the Request for Proposal if deemed in the best interest of the County of Chester. If a satisfactory proposed contract cannot be negotiated with the highest qualified offeror, negotiations will be formally terminated. Negotiations shall then be undertaken with the second most qualified offeror and so on. The Committee will make appropriate recommendation to the Chester County Council prior to actual award of contract. In evaluating the proposals, the County reserves the right to accept or reject all or any part of any proposal, waive minor technicalities, and award the contract to the offeror deemed to best serve the interests of the County; and adopt any part or all of a proposal if it is judged in the best interests of the County.
- 11.02 Each proposal will be evaluated on the content of the offeror's proposal, i.e., the burden of information clarification and research rests solely on each offeror's effort and will be considered a reflection of interest and efficiency.
- 11.03 During the review process, the review panel shall have the right to request from offerors any other information or evidence which it deems necessary for evaluation of the proposal and relevant to any one or more of the stated evaluation factors. The failure of an offeror to promptly provide such requested information or evidence shall be sufficient grounds for determining the offeror to be non-responsive and for rejection of the proposal.
- 11.04 The County reserves the right to contact an offeror for clarification of information submitted, to contact references, and to use other sources of obtaining information regarding the offeror that is deemed appropriate and would assist in the evaluation.
- 11.05 Proposals, which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of the Request for Proposal, will be classified as "acceptable". Proposals found not to be acceptable will be classified, as "unacceptable" and no further discussion concerning it will be conducted.

**12.00 EVALUATION CRITERIA**

- 12.01 The County of Chester intends to award a contract resulting from this request for proposal to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the County taking into consideration price and other evaluation factors set forth herein; however, the right is specifically reserved to reject any and all proposals. Chester County shall be the sole judge of whether or not a proposal meets the requirements of this Request for Proposal.
- 12.02 Proposals will be reviewed and evaluated by the review panel based upon the evaluation factors, in addition to price, which are listed below:

1. Organizational Experience and Capabilities



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# EXHIBIT G

October 29, 2014 Email from  
Stephen Brown, PE  
and  
Prequalification Scoring Sheet

**Clawson, States**

**From:** Brown, Stephen <stephen\_brown@gspnet.com>  
**Sent:** Wednesday, October 29, 2014 2:59 PM  
**To:** Susan Cok (scok@chestercounty.org)  
**Cc:** Clyde Flsh; Clawson, States  
**Subject:** Glt - Mass Grading Prequalification  
**Attachments:** Prequalification Scoring Calcs Tally-10-29-14.pdf

Susan,

We have had four scorers review the 18 contractor qualifications packages. We tallied the scores and have come up with a list of 5 contractors (per the original solicitation) for which to send an invitation to bid. Our group had a conference call yesterday to review and finalize. That tally is attached.

We will begin the process of notifying both the successful and the unsuccessful contractors.

Let me know if you have any questions.

Thanks

**Stephen A. Brown, P.E.**

Principal  
Land Planning and Design

**GRESHAM, SMITH AND PARTNERS**  
*Architecture, Engineering, Interiors, Planning*

1400 Nashville City Center, 511 Union Street  
Nashville, TN 37219-1733  
(P) 615.770.8522  
(M) 615.557.8530  
(F) 866.712.3370

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Griffith Mass Grading Contractor Prequalification Scoring Sheet

|               | Byrbe | Soggs | Brad Cole | Bristol | Cary | Cooper | Earnhardt | Estimote | Glover | Hoopnough | U R | Landmark | Lineberger | Mazzella | Morgan | Phillips & | Richardson | Trangle |
|---------------|-------|-------|-----------|---------|------|--------|-----------|----------|--------|-----------|-----|----------|------------|----------|--------|------------|------------|---------|
| Score #1      | 70    | 41    | 72        | 49      | 72   | 48     | 61        | 78       | 64     | 61        | 45  | 54       | 40         | 28       | 31     | 76         | 63         | 60      |
| Score #2      | 56    | 27    | 74        | 44      | 81   | 45     | 35        | 79       | 56     | 61        | 45  | 57       | 38         | 25       | 25     | 76         | 80         | 62      |
| Score #3      | 73    | 45    | 68        | 53      | 75   | 48     | 61        | 80       | 65     | 61        | 48  | 72       | 41         | 25       | 75     | 80         | 65         | 63      |
| Score #4      | 77    | 45    | 75        | 56      | 75   | 50     | 64        | 83       | 61     | 62        | 50  | 73       | 41         | 25       | 75     | 80         | 66         | 64      |
| Total Score   | 276   | 152   | 289       | 202     | 303  | 186    | 221       | 320      | 246    | 245       | 189 | 257      | 180        | 108      | 316    | 314        | 274        | 251     |
| Rank by total |       |       | 5         |         | 4    |        |           | 1        |        |           |     |          |            |          | 2      |            | 3          |         |

# EXHIBIT H

Letter from Clyde Fish to Richardson  
October 29, 2014

EXHIBIT 3



Giti Tire Manufacturing (USA) Ltd.  
936 Market Street  
Suite 301  
Fort Mill, SC 29708

October 29, 2014

Mr. Bobby Richardson  
Mr. Joseph Richardson  
Richardson Construction Company  
6806 Monticello Road  
Columbia, SC 29203

Dear Mr. Richardson and Mr. Richardson,

Based upon your company's qualifications package submitted to Alliance Consulting Engineering in July, 2014, your company has not been selected to receive an invitation to bid for the Mass Grading Package. Thank you for your interest in the project.

A handwritten signature in black ink, appearing to read "Clyde A. Flsh".

Clyde A. Flsh  
Director of Projects and Manufacturing  
Giti Tire Manufacturing (USA) Ltd.

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# EXHIBIT I

Richardson's  
Protest to Chester County CPO



STATE OF SOUTH CAROLINA

BEFORE THE CHESTER COUNTY  
CHIEF PROCUREMENT OFFICER

IN THE MATTER OF PROTEST OF  
RICHARDSON CONSTRUCTION, INC.

**PROTEST**

YOU WILL PLEASE TAKE NOTICE that Richardson Construction, Inc. ("Richardson") protests the decision of Giti Tire Manufacturing, (USA) Ltd. ("Giti") and Gresham Smith and Partners ("Gresham Smith") preventing Richardson from bidding on the mass site work project for the construction of the Giti tire plant in Chester County, South Carolina ("Project"). Richardson seeks all relief available to an aggrieved party under the Chester County Purchasing Policy ("Policy").

**FACTS**

Giti decided to build a tire manufacturing plant in Chester County due in part to incentives it received. One of the incentives is reported to be a \$37,800,000.00 award from the South Carolina Commerce Department to Chester County for the purpose of incentivizing Giti to build its plant in South Carolina. The plant is reputed to cost approximately \$540,000,000.00 to build.

On July 2, 2014, Alliance Consulting Engineers, Inc. ("Alliance"),<sup>1</sup> acting on behalf of Giti, published an advertisement in SCBO seeking Contractor's Prequalification Statements for the provision of mass site work services for the Project. *See* Ex. 1. Richardson timely submitted a Contractor's Prequalification Statement. *See* Ex. 2. Gresham Smith, the new Project Engineer, and Mr. Clyde Fish, Giti's Director of Projects and Manufacturing, evaluated the Prequalification Statements submitted. Although they did not find that Richardson failed to meet the published minimum prequalifications, they denied Richardson the opportunity to submit a bid. Giti and Gresham Smith chose to solicit bids from only the top five ranked firms when the firms that submitted prequalification statements were ranked from most to least qualified based on a point system. Richardson meets the published minimum qualifications, but, because it was ranked eighth when using the point system, it has not been permitted to bid. *See* Ex. 3. Thus, the prequalification process was employed to eliminate prospective bidders.

Richardson received notice of Giti's decision on October 30, 2014. This protest is timely filed. Richardson has been informed by representatives of Giti that the Project is subject to the requirements of the Chester County Policy.<sup>2</sup> Therefore, this protest is being lodged with the Chester County Chief Procurement Officer ("CPO"). Upon information and belief, the bid packages were released November 10, 2014, but no bids have yet been received by Giti. Consequently, Giti is not prejudiced by this appeal.

Richardson urges CPO to consider this matter quickly and render a decision promptly that the procedures employed for the procurement of the mass site work for the Project violate

<sup>1</sup> After publishing the advertisement in SCBO, Alliance was replaced by Gresham Smith as the Project Engineer.

<sup>2</sup> The undersigned counsel submitted a Freedom of Information Act ("FOIA") request to Chester County on October 31, 2014, seeking documents evidencing the transfer and use of public funds for the Project. That request has thus far gone unanswered. Therefore, Richardson cannot independently confirm that the Project is subject to the Chester County Policy. However, based on the available information and the representations of Giti, Richardson is informed and believes that the Project is subject to the Chester County Policy and that this protest is therefore appropriately asserted.

the Chester County Policy and that, pursuant to the requirements of the Policy, Richardson must be permitted to submit a bid for the mass site work for the Project.

#### ARGUMENT

The prequalification process employed for the procurement of the mass site work for the Project, which was used to eliminate prospective bidders and reduce competition in the bidding process, is not authorized by the Chester County Policy. Pursuant to the Policy, Richardson must be permitted to submit a bid.

The Chester County Policy states that, with certain limited exceptions, "all county contracts shall be awarded by competitive sealed bidding." Chester County Purchasing Manual, PP-040, at III.E. None of the exceptions to the requirement for competitive sealed bidding outlined in the Policy apply to this Project. See Chester County Purchasing Manual, PP-040, at III.E. Therefore, the Policy requires that the contract for the mass site work for the Project be awarded through the use of competitive sealed bidding.

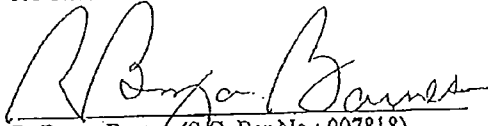
The Chester County Policy does not authorize the use of a prequalification process, and no provision in the Policy authorizes limiting the number of bids allowed for a project. The introduction to the Policy states that "[t]he intent of this policy manual is to foster competition among suppliers, enhance the value received from county expenditures and create standards for behavior in conducting purchasing activities." Chester County Purchasing Manual, P-010, at III. Likewise, one of the crucial stated objectives of the Policy is to promote competition and maximize the value per dollar spent. Chester County Purchasing Manual, P-010, at V. Limiting the number of bids permitted on a project and preventing a qualified, reputable business from submitting a bid on a procurement is contrary to the articulated intent and objectives of the Policy to promote and foster competition and maximize the value per dollar spent. Therefore,



the prequalification process employed for the procurement of the mass site work for the Project, which was used to eliminate qualified prospective bidders and reduce competition in the bidding process, is not authorized by the Policy and is directly contradictory to the spirit and objectives of the Policy. Accordingly, Richardson must be allowed to submit a bid for the mass site work for the Project pursuant to the requirements of the Chester County Policy.

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC



R. Bryan Barnes (S.C. Bar No.: 007818)  
Mary Lucille Dinkins (S.C. Bar No.: 101177)  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
Tel: (803) 771-7900; Fax: (803) 343-7017  
[bryan.barnes@rtt-law.com](mailto:bryan.barnes@rtt-law.com)  
[lucy.dinkins@rtt-law.com](mailto:lucy.dinkins@rtt-law.com)  
**ATTORNEYS FOR RICHARDSON  
CONSTRUCTION INC.**

November 12, 2014  
Columbia, South Carolina

## EXHIBIT 1

Date: July 2, 2014**CONSTRUCTION**

Project Name: Site Preparation for Giti Tire Manufacturing, (USA) Ltd.

Project Number: 14134-0012

Project Location: I-77 Mega Site on the West side of I-77 between Exits 62 and 65 in Chester County, South Carolina

Bid Security Required: (check one)

- ☐ Yes  
☒ No

Performance Bond Required: (check one)

- ☐ Yes  
☒ No

Payment Bond Required: (check one)

- ☐ Yes  
☒ No

Description of Project: Contractor's Prequalification Statement to be submitted to Alliance Consulting Engineers, Inc. no later than July 24, 2014 at 4:00 P.M.; Short list to be selected and invitation for Bids issued on August 1, 2014; Bids due to Alliance Consulting Engineers, Inc. on August 24, 2014 at 4:00 P.M.; Commence Construction in September 2014; Complete building pad preparation by December 2014.

Related Experience: Must have completed five (5) projects within the last five (5) years as a Contractor, with at least one (1) having an Earthwork value of \$2,500,000 or more. Based on the Contractor Prequalification Statements, Giti Tire Manufacturing (USA), Ltd. will select up to five (5) Contractors for the invitation to bid on the Site Preparation for the project.

Scope of Work: The scope of work includes construction of up to 3.8 million square feet of building pad to rough subgrade elevations, loop road, storm drainage basins with associated piping and structures, and erosion and sediment control.

Construction Cost Range:

Architect/Engineer:

- Firm: Alliance Consulting Engineers, Inc.
- Contact Person:
- Address: Post Office Box 8147, Columbia, SC 29202
- Telephone: 803-779-2078
- Fax: 803-779-2079
- E-mail:

Plans On File At: (Indicate city/cities where plans are available next to plan room)

- AGC:
- Dodge:
- Other:

Plans May Be Obtained From: Contractor Prequalification Packages will be available on July 7<sup>th</sup>, 2014 from Alliance Consulting Engineers, Inc. Completed Statement of Qualifications (SOQ) must be submitted to Alliance Consulting Engineers, Inc.'s office no later than 4:00 P.M. on July 24, 2014. All questions should be submitted in writing with reference to Site Preparation for Giti Tire Manufacturing (USA), Ltd. in the subject line no later than July 17, 2014 at 5:00 P.M.

Plan Deposit: N/A Refundable?: N/A

Pre-Bid Conf./Site Visit: (check one)

- ☒ No  
☐ Mandatory  
☐ Non-mandatory

Pre-Bid Date/Time (if applicable): N/A

Place: N/A

SOQ Opening Date/Time: Not to be publicly opened

Place: N/A

Agency/Owner: Giti Tire Manufacturing (USA), Ltd.

Name &amp; Title of Agency Coordinator:

- Address: Post Office Box 8147, Columbia, SC 29202 1201 Main St., Suite 2020, Columbia, SC 29201

- Telephone: 803-779-2078
- Fax: 803-779-2079
- E-mail:

Hand Deliver SOQ To: 1201 Main Street, Suite 2020, Columbia, South Carolina 29201  
 Mail SOQ To: Via FedEx or UPS: 1201 Main Street, Suite 2020, Columbia, South Carolina 29201

- 
- Advertisements for Monday's publication are due by Noon on Friday / Advertisements for Thursday's publication are due by Noon on Wednesday.
  - To submit: Fill out form, save to your computer, then attach to an email to [miller@mmo.sc.gov](mailto:miller@mmo.sc.gov) or fax to (803)737-0660.
  - Emailed ads are confirmed by return email, faxed ads are not.
  - Please check your ad in SCBO after it appears to make sure it has been included, & that the information contained in it is correct.
  - You can leave out or add any information you wish. One way to do this is to unprotect this document. If you want to be able to tab through the fields, you must have enforcement of the protection start again once you made your change(s). Starred items are necessary to creating a SCBO ad & should be included.
  - Buyers: You can download this form to your computer to a SCBO folder, & fill in the parts that repeat every time you fill out the form, like agency address, buyer's name, etc.. Then each time you open it, do a 'save as,' rename the file, & place it in your SCBO folder. This way you always start with a partially filled out form.

EXHIBIT 2

# **Contractor Prequalification Statement** **Site Preparation for Giti Tire Manufacturing, (USA) Ltd. in** **Chester County, South Carolina**

1. Name of Company: Richardson Construction Company  
 Street Address: 6806 Monticello Road  
Columbia SC 29203  
 City State Zip  
☒ Main Office ☐ Regional Office ☐ Branch Office  
 Mailing Address: P.O. Box 3489  
Columbia SC 29230  
 City State Zip
2. Contact: Bobby Richardson Phone: 803 786-9741 Cell: 803 880-2696 E-mail: brichardson@richdrt.com  
 Contact: Joseph Richardson Phone: 803 786-9741 Cell: 803 630-3139 E-mail: jrichardson@richdrt.com  
 Contact: John Brock Phone: 803 786-9741 Cell: 803 608-3194 E-mail: jbrock@richdrt.com  
 Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ E-mail: \_\_\_\_\_
3. Year Company Started: 1973 Type of Company: ☒ Corp. ☐ Partnership  
☐ Proprietor ☐ Joint Venture
4. State of Incorporation: South Carolina Date of Incorporation: 6/29/73  
 Contractor's SC License Number: G 10981 Expiration: 10/31/14  
 State Sales Tax Registration Number: 040891936 (Attach list if needed)  
 State Unemployment Insurance Number: 094321 (Attach list if needed) Federal ID Number: 07-0886664
5. List the corporate officers, partners, proprietors, members and shareholders of more than 5% of the stock of your company:
 

|    | Name                        | Year of Birth | Position              | Percent Owned |
|----|-----------------------------|---------------|-----------------------|---------------|
| a. | <u>Robert M. Richardson</u> | <u>1963</u>   | <u>President</u>      | <u>51</u>     |
| b. | <u>R. Joseph Richardson</u> | <u>1979</u>   | <u>Vice President</u> | <u>49</u>     |
| c. | <u>John T. Brock</u>        | <u>1968</u>   | <u>Secretary</u>      |               |
| d. |                             |               |                       |               |
| e. |                             |               |                       |               |
6. Under what names has your Company Operated?:  
N/A
7. How many people does your Company presently employ?:  
 Corporate Office: 5 Field Personnel: 40
8. How many people did your Company employ on average for the last 3 years?  
 Corporate Office: 5 Field Personnel: 38

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9. Has your Company ever failed to complete a project timely and had to pay liquidated damages? ☐ Yes ☒ No

If yes, please explain:

10. Have any of the Owners, Officers or Major Stockholders of your Company ever been indicted or convicted of any felony or other criminal conduct? ☐ Yes ☒ No

If yes, please explain:

11. Has your Company ever had a claim made against it for improper, delayed, defective non-compliant work or failure to meet warranty obligations? ☐ Yes ☒ No

If yes, please explain:

12. Is your Company or any of its owners, officers, or major shareholders currently involved in any arbitration or litigation? ☐ Yes ☒ No

If yes, please explain:

13. Does your Company have any outstanding judgments or claims against it? ☐ Yes ☒ No

If yes, please explain:

14. Please list any litigation brought against your Company in the past five (5) years asserting that you failed to make payments to anyone.

15. List the states in which you have performed work: Georgia Tennessee North Carolina and South Carolina

16. List Unions which you have agreement with:

| Local Number | Union Name | Agreement Expiration |
|--------------|------------|----------------------|
| N/A          |            |                      |
|              |            |                      |
|              |            |                      |
|              |            |                      |

17. Indicate the size of project you are most competitive in performing:

|                                              |                                                              |
|----------------------------------------------|--------------------------------------------------------------|
| Under \$100,000 <input type="checkbox"/>     | \$500,000-\$1,000,000 <input type="checkbox"/>               |
| \$100,000-\$200,000 <input type="checkbox"/> | \$1,000,000-\$4,000,000 <input checked="" type="checkbox"/>  |
| \$200,000-\$500,000 <input type="checkbox"/> | Greater than \$4,000,000 <input checked="" type="checkbox"/> |

18. Check all types of projects in which your Company has worked (check all that apply):

- |                                 |                                     |                                 |                                     |
|---------------------------------|-------------------------------------|---------------------------------|-------------------------------------|
| A. Government                   | <input checked="" type="checkbox"/> | F. Renovations                  | <input type="checkbox"/>            |
| B. Food processing              | <input checked="" type="checkbox"/> | G. Industrial Building          | <input checked="" type="checkbox"/> |
| C. Distribution Centers         | <input checked="" type="checkbox"/> | H. High Tech/ Laboratories      | <input checked="" type="checkbox"/> |
| D. Offices                      | <input checked="" type="checkbox"/> | I. Design Build / Design Assist | <input checked="" type="checkbox"/> |
| E. Truck Maintenance Facilities | <input checked="" type="checkbox"/> |                                 |                                     |

19. List the types of work you normally perform with your own employees: Demolition, erosion control, grading, excavation, clearing and grubbing, stormwater piping, & stone base.

20. What percentage of the company's work is normally subcontracted? 18%

21. What types of work do you normally subcontract? Paving and grading, water and sewer, curb & concrete

22. What is the largest contract your Company has completed?

Amount: 38.5 mil Year: 2007 Project name and scope: Google - Turn key site package

23. What is the largest dollar volume job you expect to do during this year?

Amount: 10 mil Project name and scope: \_\_\_\_\_

24. What is the typical dollar range of projects under contract with your firm? 3.5 mil

25. What was the average annual volume of earthwork in cubic yards over the past five (5) years?

- |                                         |                                         |
|-----------------------------------------|-----------------------------------------|
| 1. <u>1 mil / 2013</u> Yr./Cubic Yds.   | 4. <u>2.1 mil / 2010</u> Yr./Cubic Yds. |
| 2. <u>1.2 mil / 2012</u> Yr./Cubic Yds. | 5. <u>5 mil / 2009</u> Yr./Cubic Yds.   |
| 3. <u>2 mil / 2011</u> Yr./Cubic Yds.   |                                         |

26. Is your Company willing to mobilize within 48 hours of Notice of Award? ☒ Yes ☐ No

Provide an example project in which your Company did so: Lowe's Distribution in Garysburg, NC

Project Reference: \_\_\_\_\_

27. Is your Company willing to work nights and weekends to meet required construction timeline? ☒ Yes ☐ No

Provide an example project in which your Company did so: Google server farm, Lenoir, NC

Project Reference: John Culbreath (B.P. Barber) currently w/Thomas & Hutton

28. Is your Company willing to work in inclement weather to meet required construction timeline? ☐ Yes ☐ No

Provide an example project in which your Company did so: Lowe's Distribution Center, Garysburg, NC

Project Reference: Bridgestone/Firestone Aiken, SC

29. List projects completed by your company with building pads of 1,500,000 Square Feet or greater.

- Dollar General Distribution Facility Jonesville, SC
- Sterillite Clinton, SC
- Google Server Farm, Lenoir NC
- Bridgestone-Firestone Aiken, SC
- Lowe's Distribution Center, Garysburg NC

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30. List projects in which your company moved more than One (1) Million Cubic Yards of dirt in 6 months.

1. Google in Lenoir, NC
2. Sterilite in Clinton, SC
3. Dollar General Distribution Facility in Jonesville, SC
4. Anderson County Airport, Anderson, SC
5. \_\_\_\_\_

31. Provide a list of equipment that is owned by the Contractor and is available for this project.

32. Provide a list of equipment that will be purchased, leased or rented for this project.

Attach a copy of your latest audited financial statement. (Your financial statement will be treated confidentially).

33. If the attached financial statement is not for the identical Company named above, explain the relationship and financial responsibility of the company whose financial statement is provided:

34. Name of Bank: Wells Fargo  
Address: 1441 Main Street, 16th Floor Columbia, SC 29202  
Phone: 803 622-4307 Contact Person: Marvin Robinson  
How is credit secured? owners  
What is Company's Dunn & Bradstreet Number: 06-7000-166 D&B Rating: 2A1  
Pay Record: \_\_\_\_\_ Date of Rating: 6/2014  
Remarks: 4 mil line of credit secured by personal financials

35. Bonding Company:

Name of Surety: \_\_\_\_\_ Key Contact Person / Phone: \_\_\_\_\_  
A. Liberty WD Morris 803 733-5284  
B. Bonding Capacity: For Job 50 mil Aggregate: 75 mil  
Date of Last Bond: 04/2014 Amount: 27,000  
Bond Rate 1 %  
Please list the persons or entities who provide indemnification to your Surety: \_\_\_\_\_

36. List three (3) of your major suppliers:

- A. Name: Vulcan Materials  
Address: 845 Georgia Street Columbia, SC 29201  
Contact: Eric Seymore Telephone: 803 240-2955
- B. Name: Truck Supply  
Address: 1270 Buckner Road Columbia, SC 29203  
Contact: Bonnie Telephone: 803 754-8022
- C. Name: HD Waterworks  
Address: 914 Childs Drive W. Columbia, SC 29160  
Contact: Steven Carter Telephone: 803 309-4622

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37. List three (3) subcontractors that you do business with:

- A. Name: Hamdon, Inc.  
 Address: P.O. Box 38 Lugoff, SC 29078  
 Contact: Jeff Hamdon Telephone: 803 438-1078
- B. Name: LAD Construction, CO  
 Address: P.O. Box 2684 W. Columbia, SC 29171  
 Contact: Allen Hutto Telephone: 803 600-8208
- C. Name: S&T Grading  
 Address: 1848 Old Orangeburg Road, Lexington, SC 29072  
 Contact: Mike Sturkie Telephone: 803 618-8809

38. Trade Association Memberships: AGC, SCEDA, NCEDA

39. List local or national accredited training programs in which you participate (on/off or management training):  
OSHA, MSHA, Red Cross, SWWPP, CPR, Competent Person Training

40. List key office personnel and field supervisors (attach resumes):

|    | Name Position            | Year of Birth | Years Experience | Previous Employer         |
|----|--------------------------|---------------|------------------|---------------------------|
| A. | <u>Bobby Richardson</u>  | <u>1983</u>   | <u>43</u>        | <u>N/A</u>                |
| B. | <u>Joseph Richardson</u> | <u>1979</u>   | <u>16</u>        | <u>N/A</u>                |
| C. | <u>John T. Brock</u>     | <u>1950</u>   | <u>15</u>        | <u>Bose Corporation</u>   |
| D. | <u>Phil Motta</u>        | <u>1981</u>   | <u>34</u>        | <u>Barley Logging</u>     |
| E. | <u>Gerry Kelly</u>       | <u>1988</u>   | <u>27.5</u>      | <u>Sharma Contractors</u> |

General Remarks:

41. Please list your Company's Workers' compensation Interstate/Intrastate Experience Modification Rate for the most recent three years. (Attach a copy of your Insurance carrier or state fund (on their letterhead) verifying the EMR data.)

Intrastate (Yr/Rate)  
2013/04      2012/06      2011/03

42. Please use the three (3) most recent years OSHA No. 300/200 Log to fill in the number of cases for each of the following categories: (attach a copy of your last three years of OSHA 300/200 logs.)

| Year                                                                     | 2013     | 2012     | 2011     |
|--------------------------------------------------------------------------|----------|----------|----------|
| A. Number of fatalities<br>(Total Columns 1 & 8)                         | <u>0</u> | <u>0</u> | <u>0</u> |
| B. Number of lost and restricted work day cases<br>(Total Columns 2 & 9) | <u>0</u> | <u>1</u> | <u>1</u> |
| C. Number of medical treatment cases<br>(Total Columns 6 & 13)           | <u>0</u> | <u>0</u> | <u>0</u> |
| D. Number of medical treatment cases                                     |          |          |          |

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|                                     |        |        |        |
|-------------------------------------|--------|--------|--------|
| (Total Columns 3 & 10)              | 0      | 0      | 0      |
| E. Employee Hours Worked            | 87,189 | 83,043 | 88,428 |
| F. OSHA Recordable Incidence Rate   | 0      | 2.41   | 3.01   |
| G. OSHA Lost Workday Incidence Rate | 0      | 2.41   | 3.01   |

Note: Items in parenthesis come from your OSHA 200 Log  
 Employee Hours Worked = total number of hours worked during the year by all employees.  
 Recordable Incidence Rate =  $[(A+B+C) \times 200,000 / \text{Employee Hours Worked}]$   
 Lost Workday Incidence Rate =  $[D \times 200,000 / \text{Employee Hours Worked}]$

43. How many OSHA violations has your Company received the last three (3) years?  
 (Yr. = violations)  
 1 = 2013

Any willful OSHA violations? ☐ Yes ☒ No

Please provide a brief description of the violation(s); use additional paper if necessary.

Any employee deaths in the past three (3) years? ☐ Yes ☒ No  
 Please provide a brief description of the circumstances:

44. Do you have a qualified person responsible for safety within your Company? ☒ Yes ☐ No  
 Please describe his / her qualifications:

45. Does a qualified person do safety inspections on all of your projects? ☒ Yes ☐ No  
 Frequency: Weekly

46. Do you have a written Company Safety Policy and Program and will you provide copies if requested? ☒ Yes  
☐ No

47. Does your Company have a substance abuse policy? ☒ Yes ☐ No  
 If yes, please check which are included in the policy:  
☒ Pre-hire / Initial Employment  
☒ Cause  
☒ Post Accident / Incident  
☒ Random  
☒ Periodic

48. Do you have a return to work / light duty program? ☐ Yes ☒ No  
 If yes, please describe:

49. Have you ever implemented 100% fall protection? ☒ Yes ☐ No

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If yes, please describe:

60. Do you require documented safety meetings for your employees? Indicate which and how often.

|                        |                                                                     |                                                    |
|------------------------|---------------------------------------------------------------------|----------------------------------------------------|
| Field Supervisors      | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency, <u>Weekly</u>                           |
| New Hires              | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency, <u>Weekly</u>                           |
| Employees              | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency, <u>Weekly</u>                           |
| Subcontractors/Vendors | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Frequency, <u>Weekly</u> Yes to subs no to vendors |

61. Does your Company provide safety training for all employees? ☒ Yes ☐ No

If yes, please describe:

62. Do you have office representatives (not directly involved in the project) who will visit and audit the project for safety?

☒ Yes ☐ No Frequency, Weekly

63. Does your Company set annual safety goals? ☐ Yes ☐ No

If yes, please describe:

64. Does your Company have a program recognizing your employees for safety performance excellence?

☐ Yes ☒ No

65. Does your Company have a disciplinary program in place for safety violations?

☒ Yes ☐ No

66. Does your Company review the safety management system of your subcontractors?

☒ Yes ☐ No

67. Does your Company conduct accident / incident investigations?

☒ Yes ☐ No

I HEREBY CERTIFY that as a duly authorized representative of Richardson Construction Co.

(bidder), the information provided is to the best of my knowledge accurate and that failure to provide accurate information will result in disqualification of my bid.

R. Joseph Richardson  
Signature

R. Joseph Richardson  
Name (Please Print)

Vice-President  
Title

7-18-14

Date

John T. Brock  
Notary Public for South Carolina

My Commission Expires: 06-08-18

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Date: July 1, 2014

EXHIBIT 3



Grit Tire Manufacturing (USA) Ltd.  
936 Market Street  
Suite 301  
Fort Mill, SC 29708

October 29, 2014

Mr. Bobby Richardson  
Mr. Joseph Richardson  
Richardson Construction Company  
6806 Monticello Road  
Columbia, SC 29203

Dear Mr. Richardson and Mr. Richardson,

Based upon your company's qualifications package submitted to Alliance Consulting Engineering in July, 2014, your company has not been selected to receive an invitation to bid for the Mass Grading Package. Thank you for your interest in the project.

A handwritten signature in black ink, appearing to read 'Clyde A. Fish'.

Clyde A. Fish  
Director of Projects and Manufacturing  
Grit Tire Manufacturing (USA) Ltd.

# EXHIBIT J

Richardson's Supplement to  
Protest to Chester County CPO



STATE OF SOUTH CAROLINA

BEFORE THE CHESTER COUNTY  
CHIEF PROCUREMENT OFFICER

IN THE MATTER OF PROTEST OF  
RICHARDSON CONSTRUCTION, INC.

**SUPPLEMENT TO PROTEST**

YOU WILL PLEASE TAKE NOTICE that Richardson Construction Company, Inc. ("Richardson") hereby submits this supplement to the protest it filed with the Chester County Chief Procurement Officer ("CPO") on November 12, 2014. Richardson protests the decision of Giti Tire Manufacturing, (USA) Ltd. ("Giti") and Gresham Smith and Partners ("Gresham Smith") preventing Richardson from bidding on the mass site work project for the construction of the Giti tire plant in Chester County, South Carolina ("Project"). Richardson incorporates by reference the protest it filed with the CPO on November 12, 2014, and seeks all relief available to an aggrieved party under the Chester County Purchasing Policy ("Policy").

**FACTS**

Richardson filed a protest in this matter with both the CPO and the South Carolina Department of Commerce and State Engineer's Office (collectively the "State") on November 12, 2014. Richardson filed a protest with both the State and the County because, as of November 12, 2014, Richardson had not received documents in response to Freedom of Information Act ("FOIA") requests it submitted to both Chester County and the South Carolina Department of

Commerce seeking documents evidencing the transfer and use of public funds for the Project. Although it was apparent to Richardson that the Project is subject to governmental procurement rules since nearly \$40 million of public funds are being used for the Project, Richardson could not confirm whether the Project is subject to the Chester County procurement policy ("Policy") or the South Carolina Consolidated Procurement Code ("Code") without reviewing the documents showing the transfer and use of public funds for the Project. At the time that Richardson filed its protest, it was unable to review such documents due to the fact that neither Chester County nor the Department of Commerce had responded to Richardson's FOIA request. Richardson could not wait to file a protest until it received responses to its FOIA requests due to the strict time constraints for submitting a protest. Therefore, Richardson submitted a protest to both Chester County and the State in order to adequately protect its rights based on the information (and lack of information) available at the time.

On November 18, 2014, Richardson received documents from the Department of Commerce in response to its FOIA request to the Department.<sup>1</sup> The documents received from the Department of Commerce are attached hereto as Exhibit 4. These documents shed more light on the use of public funds for the Project and reveal what appears to be a contradiction between the Code and the funding documents.

#### ANALYSIS

The "Grant Award Agreement" for the Project provides that the selection of contractors for the Project "must follow applicable procurement laws, regulations and guidelines." Ex. 4, "Grant Award Agreement," at Section 8. The Performance Agreement among Chester County, Giti, and the South Carolina Coordinating Council for Economic Development ("Council")

<sup>1</sup> Richardson has still not received documents in response to its FOIA request to Chester County seeking documents evidencing the transfer and use of public funds for the Project, nor has it received any assurance from the County that it will in fact be provided with such documents.

regarding the use of public funds for the Project states that the selection of contractors for the Project "must take place in accordance with the Chester County procurement ordinance." Ex. 4, "Performance Agreement," ¶5.0. Thus, the documents governing the award of public funds for the Project provide that the Project is subject to the Chester County Policy.

The Grant Award Agreement specifies with great detail the purpose for which the subject public funds are to be used. Ex. 4, Grant Award Agreement, Section 2. Section 2 of the Grant Award Agreement states that the "[f]unds will be used for land acquisition and real property improvements for Giti Tire Holdings (USA) Ltd (Project Summer), which will invest \$560 million and create 1,700 new jobs." Section 3 further provides that the public funds awarded under the agreement are to be used "only for the Project," and Section 6 requires any surplus funds to be returned to the Council. *Id.* at §§3, 6. Thus, the Grant Award Agreement makes it clear that the public funds being awarded for the Project may only be used for expenses related to land acquisition and real property improvements for the construction of the Giti plant in Chester County. Likewise, Paragraph 3.0 of the Performance Agreement provides that the funds will be used "to assist the Company [Giti] with the costs of site acquisition, site preparation, site infrastructure improvements and other related capital expenditures for real property improvements at the Project site in Chester County." Ex. 4, "Performance Agreement," ¶3.0. The Grant Award Agreement and the Performance Agreement both reveal that the public funds available for the Project are provided *only* to assist with the costs of site acquisition, site preparation, and infrastructure improvements for the Project.

Section 11-35-40(2) of the Code provides that the Code "applies to every procurement or expenditure of funds by this State under contract acting through a governmental body . . . except that this code does not apply to . . . the issuance of grants." S.C. CODE ANN. §11-35-40(2). A



"grant" is defined by the Code as "the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law." §11-35-310(19). The Code further provides that the definition of a grant "does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract," *Id.* Thus, the Code does not apply to grants, but it does apply to awards. As defined in §11-35-310(19), the distinction between a grant and an award under the Code is the specificity of the purpose for which the funds are given. Funds given to generally support a program authorized by law constitute a grant, whereas funds given for the purpose of procuring a specified end product constitute an award.

The degree of specificity indicated for the use of public funds for the Project, as outlined in the Grant Award Agreement and the Performance Agreement, reveal that the issuance of public funds for this Project constitutes an award, not a grant. The funds are available only for purposes of procuring a specified end product - the acquisition and preparation of the site for the construction of the Giti tire plant in Chester County. Because the public funds at issue here constitute an award under the Code, the Project is subject to the requirements of the Code pursuant to §11-35-40(2) of the Code.<sup>2</sup> There does not appear to be any authority in the Code that allows a governmental body such as the Council to exempt a particular procurement from the requirements of the Code when the procurement would otherwise be subject to the Code.

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<sup>2</sup> None of the exemptions from the Code outlined in §11-35-710 apply to this Project.

Therefore, there is tension between the Code and the Performance Agreement, and the Performance Agreement appears to contradict the Code.<sup>3</sup>

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC

Mary Dinkins  
R. Bryan Barnes (S.C. Bar No.: 007818)  
Mary Lucille Dinkins (S.C. Bar No.: 101177)  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
Tel: (803) 771-7900; Fax: (803) 343-7017  
[bryan.barnes@rtt-law.com](mailto:bryan.barnes@rtt-law.com)  
[lucy.dinkins@rtt-law.com](mailto:lucy.dinkins@rtt-law.com)  
**ATTORNEYS FOR RICHARDSON  
CONSTRUCTION INC.**

November 20, 2014  
Columbia, South Carolina

<sup>3</sup> As mentioned above, Richardson has not yet received a response to its October 31, 2014, FOIA request to Chester County seeking documents evidencing the use of public funds for the Project. Therefore, this analysis is based solely upon the information known to Richardson at this time and could change in the event that additional documents are provided.

# EXHIBIT 4

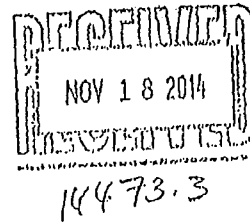


Nikki R. Haley  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

Robert M. Hill III  
Secretary

November 14, 2014



Mary Lucille Dinkins, Esquire  
Rogers Townsend & Thomas PC  
Post Office Box 100200  
Columbia, SC 29202

Dear Ms. Dinkins:

This letter is in response to your recent request pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq. ("FOIA") for copies of certain public records related to the Giti Tire Manufacturing plant in Chester County. Specifically, your request seeks:

- "any and all public records in the possession of the Department of Commerce showing the source of funds for the construction of the Giti Tire Manufacturing plant in Chester County, South Carolina. . . . [including, but not limited to] all records showing the transfer or grant of funds from the State of South Carolina to Chester County related to the construction of the Giti Tire plant in Chester County."
- "any and all records relating in any way to the prequalification and ranking of potential bidders for the mass site work for the construction of the Giti Tire plant in Chester County."

Enclosed please find copies of the agreements related to a Closing Fund grant awarded by the South Carolina Coordinating Council for Economic Development to Chester County for the purpose of offsetting costs related to land acquisition and real property improvements concerning the Giti project. Also enclosed are copies of public records concerning reimbursement to Chester County regarding payment for engineering services rendered. Finally, we enclose copies of public records in the agency's possession related to the prequalification and ranking of potential construction contract bidders pursuant to Chester County's procurement procedures, which are applicable to the Giti contractor selection.

Please note that, while these final incentive agreements and post-recruitment records are subject to public disclosure, there may be other public records related to the recruitment of Giti that are responsive to your request, but remain exempt pursuant to S.C. Code Section 30-4-

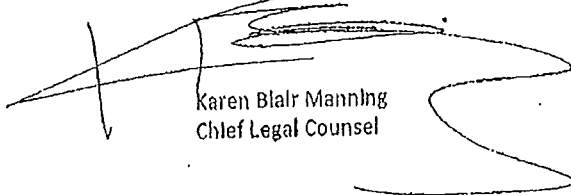
1201 Main Street, Suite 1000, Columbia, SC 29201  
Tel: (803) 737-0400 • Fax: (803) 737-0418 • [www.socommerce.com](http://www.socommerce.com)

Mary Lucille Dinkins, Esquire  
November 14, 2014  
Page Two

40(a)(5) (documents of or incidental to proposed contracts) and Section 30-4-40(a)(9) (memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body to attract business or industry to invest within South Carolina).

Because your request required only nominal staff time to identify the responsive public records and the records are not voluminous, we are waiving applicable fees.

Sincerely,



Karen Blair Manning  
Chief Legal Counsel

KBM  
Enclosures

SOUTH CAROLINA COORDINATING COUNCIL  
FOR ECONOMIC DEVELOPMENT  
1201 Main Street, Suite 1600  
Columbia, South Carolina 29201

GRANT AWARD AGREEMENT

In accordance with the provisions of Section 12-28-2910 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), the South Carolina Coordinating Council for Economic Development, hereinafter called the Council, does commit and grant to Chester County, hereinafter called the Grantee, the sum in dollars set forth in Section 3 below for the Project identified in Section 2 below. The acceptance of the Agreement creates a contract between the Council and the Grantee, legally binding the Grantee to carry out the activities and obligations set forth in the Application and this Agreement, all in accordance with the terms and conditions set forth in this Agreement and in any appendices attached hereto and any other documents or conditions referred to herein.

**Section 1: DEFINITIONS:**

- (a) Agreement means this Grant Award Agreement.
- (b) Application means the grant application forms submitted by the Grantee to the Council.
- (c) Company means the economic development corporate entity that is identified in the Application.
- (d) Contractor means a private contractor who undertakes all or part of the Project.
- (e) Council means the South Carolina Coordinating Council for Economic Development (CCED).
- (f) Grant means the dollars committed by the Council to the Grantee for the Project.
- (g) Grantee means the unit of government designated for the Grant and set forth above.
- (h) Project means the project identified and described in the Application.
- (i) State means the State of South Carolina and any agencies or offices thereof.

**Section 2: PROJECT DESCRIPTION:** Funds will be used for land acquisition and real property improvements for Old The Holdings (USA) Ltd (Project Summer), which will invest \$560 million and create 1,700 new jobs. This project has been approved by the Council and is included by reference as Coordinating Council Grant #C-14-2371 - Land Acquisition and Real Property Improvements.

**Section 3: AWARD AMOUNT:** The Council hereby commits an amount not to exceed \$35,775,000, to be used only for the Project and related costs, as described in the Application. Eligible costs that can be paid from the Grant shall include only those costs expressly set forth in the Application.

**3.1: Approval of Third Party Contracts:** The Grantee must submit all proposed agreements with third party contractors engaged to perform work within the scope of the Grant to the Council prior to finalizing those agreements.

**3.2: Notice to Proceed:** The Grantee must obtain from the Council written notice to proceed prior to incurring costs against the Grant. If the Grantee or the Company needs to incur expenses prior to the Council's notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

**3.3: Engineering Costs:** Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.

**3.4: Administrative Fees:** The Grantee may not charge an administration fee in connection with the Grant.

**Section 4: AMENDMENTS:** Any changes in the scope of work of the Project, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.

**Section 5: PERFORMANCE:** By acceptance of this Grant, the Grantee warrants that it will complete or cause to be completed the Project as described in the approved Application, including any approved amendments appended hereto. Should Grantee fail to cause the completion of all or part of the Project, the Council shall be entitled to reimbursement from the Grantee of any Grant funds that were received by the Grantee for any work that was not performed.

**Section 6: FUNDING UNDERRUNS:** The Grantee agrees that it will return surplus Grant funds that result from project cost underruns.

**Section 7: AUDIT:** The Grantee must include an examination and accounting of the expenditures of Grant funds in its first annual audit following the completion of the Project, and submit a copy of the audit report to the Council. The Grantee agrees that it will reimburse the Council for unauthorized and unwarranted expenditures disclosed in the audit, if so directed by the Council. Upon request of the Council, the Grantee shall make available, and cause the Company to make available, for audit and inspection by the Council and its representatives all the books, records, files and other documents relating to any matters pertaining to the Project, the Application or this Agreement. The Grantee shall have prepared an audit of Grant funds received under this Agreement that adheres to the following audit requirements, whichever is applicable:

- (a) Generally accepted auditing standards established by the American Institute of Certified Public Accountants, (AICPA);

- (b) The General Accounting Office (GAO) Standards for Audits of Governmental Organizations, Programs, Activities, and Functions, latest revised edition (Yellow Book);

**Section 8: CONTRACTOR SELECTION:** If the Grantee desires to select a Contractor to undertake all or any part of the scope of work of the Project, then the selection of that Contractor by the Grantee must follow applicable procurement laws, regulations and guidelines. The Grantee warrants that it will adhere to all such applicable procurement laws, regulations and guidelines in the selection of the Contractor. In addition, the Grantee may not award contracts to any Contractors who are ineligible to receive contracts under any applicable laws or regulations of the State.

Upon request, the Grantee must make available to the Grantee's auditor, the Council, and its representatives, and the public Grantee's records and other documentation of the procurement process and any sole source justification. If the Grantee fails to adhere to procurement procedures required by law, the Council may call for repayment by the Grantee for Grant funds that were expended in a disallowable manner.

A Contractor must represent that it has, or will secure at its own expense, all personnel required in the performance of the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with the Council or the Grantee.

All of the services required to complete the Project will be performed by the Grantee and/or a Contractor, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

The Grantee and/or a Contractor shall be liable for and pay all taxes required by local, state, or federal governments, which may include, but not be limited to, social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Council to or for the benefit of the Grantee and/or a Contractor or his employee or agents by reason of this Agreement.

The Grantee warrants that it will enforce all terms and conditions of this Agreement upon the Company and any Contractors.

**Section 9: CONFIDENTIAL INFORMATION:** Any reports, information, data, or other documentation given to or prepared or assembled by the Grantee under this Agreement which the Council requests to be kept confidential shall not be made available to any individual or organization by the Grantee without the prior written approval of the Council.

**Section 10: DISCRIMINATION:** The Grantee shall not, and shall impose on its Contractors the obligation not to, discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The Grantee and any Contractor shall be required to take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, age, sex, national origin, or handicap.



**Section 11: INTEREST OF CERTAIN FEDERAL OR STATE OFFICIALS:** No elected or appointed State or federal official shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**Section 12: INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANTEE, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS:** No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or this Agreement. The Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Project and this Agreement this provision prohibiting such interest.

**Section 13: PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION:** The assistance and Grant funds provided under this Agreement shall not be used for the payment of any bonus or commission for the purpose of obtaining the Council's approval of the Application, or the Council's approval of any applications for additional assistance or Grant funds, or any other approval or concurrence of the Council required under this Agreement. However, the payment from Grant funds of reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Project costs.

**Section 14: MAINTENANCE OF RECORDS:** The Grantee shall retain records for property purchased totally or partially with Grant funds for a period of three years after its final disposition. The Grantee shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.

**Section 15: MBE OBLIGATION:** The Grantee agrees to use its best efforts to ensure that minority business enterprises, as identified in Article 21, Sections 11-35-5210 through 11-35-5270 of the Code have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with funds provided under this Agreement. In this regard, the Grantee and its Contractors shall take all necessary and reasonable steps to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

**Section 16: PROJECT COMPLETION:** The Grantee must complete, or cause to be completed, the portion of the Project to be funded in whole or in part with Grant funds within 18 months of the Date of Award of this Grant. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.

**Section 17: SANCTIONS:** If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the Council may take, in addition to

any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

**Section 18: APPLICABLE LAW:** This Agreement is made under and shall be construed in accordance with the laws of the State of South Carolina, without regard to conflicts of laws principles. The federal and state courts within the State of South Carolina shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement.

**Section 19: APPROPRIATIONS:** Notwithstanding any other provisions of this Agreement, the parties hereto agree that the Grant funds awarded hereunder are payable by appropriations from the State. In the event sufficient appropriations, grants, and monies are not made available to the Council to pay the compensation and expenses hereunder for any fiscal year, this Agreement shall terminate without further obligation of the Council. In such event, the Council shall certify to the Grantee (to the fact that sufficient funds have not been made available to the Council) to meet the obligations of this Agreement; and such written certification shall be conclusive upon the parties.

**Section 20: COPYRIGHT:** No material produced in whole or in part under this Grant shall be subject to copyright in the United States or in any other country. The Council shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Grant.

**Section 21: TERMS AND CONDITIONS:** The Council reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Council and any other agency of the State.

**Section 22: REPORTING REQUIREMENTS:** The Grantee agrees to submit quarterly progress reports that provide a status update and identification of any material issues affecting the Project. Progress reports will be due on the first day of the month beginning with the first full month after commencement of the Project. Failure to submit progress reports will be subject to sanctions identified in Section 17 herein. The Grantee further agrees to complete and submit all quarterly progress reports and any other reports, in such form and according to such schedule, to the extent not specified herein, as may be required by the Council.

**Section 23: PROJECT START-UP:** The project must begin within three months of the Date of Award of the Grant. If the Grantee or the Company does not begin the Project within three months of the Date of Award of the Grant, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds provided to Grantee and terminate this Agreement. For purposes of this section, Grantee or the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.

**Section 24: LIABILITY:** The Grantee understands that Council accepts no liability for the Project nor any responsibility other than its agreement to provide the Grantee the Grant funds for the Project in the amount shown in Section 3, insofar as such funds are expended in accordance with the terms and conditions of this Agreement. During the

term of the Grant, the Grantee shall maintain tort liability insurance or shall have a self-funded and excess liability program with coverage amounts sufficient to meet the limits set forth under the SC Torts Claims Act in Section 15-78-120, as may be amended.

**Section 25: PAYMENT:** The Grantee must submit to the Council a certified request for payment for work that is documented by the Grantee. The Council, upon its approval of the request for payment, shall forward such requests to the Finance Department of the South Carolina Department of Commerce. Payments are issued from the Comptroller General's office. Payment requests should be submitted to the Council no more than once a month.

The Grantee will certify, to the best of its knowledge, information and belief, that the work on the Project for which reimbursement is requested has been completed in accordance with the terms and conditions of this Agreement, and that the payment request is due and payable from Grant funds.

All requests for payment must be certified as valid expenditures by an official representative of the Grantee. Invoices and canceled checks supporting the Grantee's request for reimbursement from Grant funds must be kept on file and be available for inspection at any time.

**Section 26: RESPONSIBILITY FOR MAINTENANCE:** Maintenance of new roads and other improvements to the Grantee's or Company's right of way and/or property is the sole responsibility of the Grantee. Neither the Council nor the State shall have any responsibility whatsoever to maintain such roads and other improvements relating to the Project. The Grantee may assign this responsibility to any agreeable party.

**Section 27: SEVERABILITY:** If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

This Agreement shall become effective, as of the Date of Award, upon receipt of one copy of this Agreement which have been signed in the space provided below. The agreement must have original signatures and must be returned within fifteen days from the Date.

6-5-14  
Date of Award

Alan D. Young  
Alan D. Young  
Executive Director  
Coordinating Council for Economic Development

ACCEPTANCE FOR THE GRANTEE

P. Carlisle Roddey  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

7/01/14  
Date

P. CARLISLE RODDEY County Supervisor  
Typed Name and Title of Authorized Official

ATTEST:

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate

Nikki R. Haley  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

Robert M. Hill III  
Secretary

### ADDENDUM TO ORIGINAL CONTRACT

Gill Tire Holdings (USA), Ltd. ~ #C-14-2371

CHESTER COUNTY

ORIGINAL CONTRACT AMOUNT  
APPROVED 06-05-14

\$35,775,000

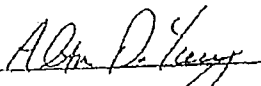
ADDITIONAL FUNDING  
APPROVED 09-04-2014

\$550,000

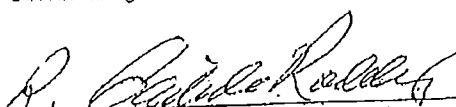
Funds will be used for additional costs anticipated for land acquisition, site preparation, infrastructure, and other real property improvements..

REVISED TOTAL CONTRACT AMOUNT

\$36,325,000

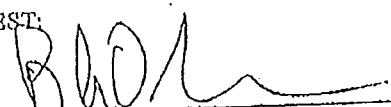
  
Alan D. Young  
Coordinating Council for Economic Development

9.4.14  
Date

  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

9/19/14  
Date

ATTEST:

  
Signature of Elected City Official, as appropriate

1201 Main Street, Suite 1000, Columbia, SC 29201  
Tel: (803) 737-0400 • Fax: (803) 737-0418 • [www.socommerce.com](http://www.socommerce.com)

Execution Version

**PERFORMANCE AGREEMENT**  
**(Governor's Closing Fund Assistance)**  
**C-14-2371**

This Performance Agreement ("Agreement") is made to be effective the 5<sup>th</sup> day of June, 2014, by and among Chester County, a political subdivision of the State of South Carolina and hereinafter referred to as the "Grantee," Old Tire Holdings (USA) Ltd., hereinafter referred to as the "Company," and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council."

**WITNESSETH**

That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the above parties do hereby agree as follows:

- 1.0 Agreement. The parties recognize that this Agreement is based on a Governor's Closing Fund ("OCF") grant award being awarded or made by the Council to the Grantee in an amount not to exceed Thirty Five Million Seven Hundred and Seventy Five Thousand and No/100 Dollars (\$35,775,000) (the "Grant") for the purposes identified in Section 3.0 herein.
- 2.0 Project Description. The Company will establish and equip two manufacturing plants and support operations of a corporate facility, a research and development facility and a distribution facility through the acquisition, construction and purchase of certain land, buildings, furnishings, apparatuses and equipment in the County, hereinafter referred to as the "Project."
- 3.0 Use of Proceeds. The Grantee will use the Grant to assist the Company with the costs of site acquisition, site preparation, site infrastructure improvements and other related capital expenditures for real property improvements at the Project site in Chester County (collectively, "Grant Project"). To the extent that grant funds are disbursed under this Agreement such disbursed funds are, hereinafter referred to as the "Assistance." Any changes in the scope of the Grant Project, the costs of which are to be reimbursed through Grant funds must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.
- 3.1 Disbursement of Funds. No funds will be disbursed until the approval of expenditures, through submission of invoices and proof of payment to the Grantee; provided, however, that funds will be disbursed within thirty (30) days from the date that invoices for eligible expenditures and sufficient proof of payment are delivered to the Grantee.
- 3.2 Third Party Contracts. The Company must submit all agreements with third party contractors engaged to perform work within the scope of the Grant to the

Council prior to or simultaneously with the submission of invoices relating to that agreement.

- 3.3 Notice to Proceed. The Company obtained from the Council a written conditional notice to proceed dated May 8, 2014 (the "Notice to Proceed") prior to incurring any costs to be reimbursed from the Grant. Any expenditure made prior to the date of the Notice to Proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.
- 3.4 Engineering Costs. Reimbursement of engineering costs for professional services will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.
- 3.5 Compliance with GCF Requirements. The Grantee and the Company must comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCF funds.
- 3.6 Funding Overruns. The Company agrees that it will commit and provide monies from its own resources for cost overruns that are required to complete the Grant Project. This Agreement creates no obligation on the part of the Grantee, the Council or the State of South Carolina (the "State") to provide funds for the cost overruns.
- 3.7 Use of Grant Funds. The Company must complete the Grant Project within twenty-four (24) months of the date hereof. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion, and such extensions shall not be unreasonably withheld.
- 4.0 Project Start-Up. The Project must begin within six months of the date hereof. Subject to the extensions provided in this Section 4.0, if the Company does not begin the Project within six months of the date hereof, the Council reserves the right to rescind the Grant and terminate this Agreement. For purposes of this section, the Project shall have begun once the Company has acquired the Project site in Chester County. Notwithstanding the foregoing, if the due diligence undertaken in connection with the purchase of the Project site reveals a condition on or affecting the Project site that cannot be resolved to the Company's satisfaction within six months of the date hereof and will delay the purchase beyond six months of the date hereof, such time period will automatically be extended an additional three months. Further time period extensions may also be requested by the Company and will be subject to approval by the Council, which will not be unreasonably withheld.
- 5.0 Contractor Selection. If the Company desires to select a private contractor to undertake all or any part of the scope of work of any portion of the Grant Project, then the selection

of that contractor by the Company must take place in accordance with the Chester County procurement ordinance.

- 6.0 **Investment Requirement.** The Company agrees to make and maintain, or cause to be made and maintained through an Affiliate (as defined below), capital investment of not less than Five Hundred Million and No/Dollars (\$500,000,000), above and beyond any reimbursement from the Grant or any additional State grants, for land, building and machinery and equipment at the Project (the "Investment Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that it has satisfied the Investment Requirement (the "Investment Achievement Period"). The Company's investment may be verified at the request of the Grantee or the Council. For purposes of this Agreement, "Affiliate" means any corporation, partnership, or other entity that controls or is controlled by or is under common control at any level with the Company.
- 7.0 **Job Creation Requirement.** The Company agrees to create and maintain, or cause to be created and maintained through an Affiliate, no fewer than 1,700 new, full-time jobs at the Project and otherwise within the State (the "Job Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that it has satisfied the Job Requirement (the "Job Achievement Period"). Notwithstanding the foregoing, for purposes of this Agreement, no employee of the Company or an Affiliate at a retail store will be counted towards the Job Requirement.
- 8.0 **Maintenance Periods/Terms.**
- 8.1 Once the Company has satisfied the Investment Requirement within the Investment Achievement Period, the Company agrees to maintain the Investment Requirement at the Project for a period beginning on the first date following the expiration of the Investment Achievement Period and ending on the fifth anniversary thereof (the "Investment Maintenance Period").
- 8.2 Once the Company has satisfied the Job Requirement within the Job Achievement Period, the Company agrees to maintain the Job Requirement at the Project for a period beginning on the first date following the expiration of the Job Achievement Period and ending on the fifth anniversary thereof (the "Job Maintenance Period").
- 9.0 **Access to Records.** The Company agrees to provide the Grantee and the Council reasonable access to its facilities to substantiate the employment and investment committed by this Agreement. This covenant shall continue until the Company is notified in writing by the Council that the Job Requirement and the Investment Requirement have each been met, the Investment Maintenance Period and the Job Maintenance Period have each expired, and funds have been expended and documented, or until repayment of the Assistance occurs in accordance with this Agreement.



- 10.0 Compliance. The Council will review the hiring records and notify the Company in writing of its compliance or non-compliance with this Agreement. Upon written notification from the Council that both the Job Requirement and the Investment Requirement have been fulfilled and the Job Maintenance Period and the Investment Maintenance Period have each expired, this Agreement and all obligations of the Company, unless otherwise stated, hereunder shall terminate.
- 11.0 Maintenance of Records. The Company shall retain records for property purchased totally or partially with Grant funds for a period of three years after such purchase. The Company shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.
- 12.0 Repayment of Assistance. Failure to satisfy and maintain the Job Requirement and the Investment Requirement as set forth herein may result in repayment of all or a portion of the Grant funds expended. The Company will make re-payments to the Grantee, who will immediately notify and reimburse the Council.
- 12.1 Early Default. If the Company does not locate in the State or otherwise fails to invest at least \$150,000,000 and create at least 300 new, full-time jobs in the State by December 31, 2020, then Company shall be required to tender to the Grantee an amount equal to the amount of all Grant funds expended as of such date.
- 12.2 Achievement Period Requirements. On or before the expiration of the Investment Achievement Period, the investment by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than the Investment Requirement, and on or before the expiration of the Job Achievement Period, the number of new, full-time jobs created by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than 88% of the Job Requirement (the "Minimum Job Requirement"). If the Company does create jobs and/or make investment but fails to meet such requirements, the Company shall be required to repay a portion of the Grant funds expended, based on the actual number of jobs created and/or investment level achieved as of the last day of the Investment Achievement Period or the Job Achievement Period, as applicable. The repayment amount for failure to meet either the Investment Requirement or the Minimum Job Requirement will be calculated independently in accordance with the formulas provided below.
- 12.2.1 Shortfall in Investment. In the event that the Company fails to meet the Investment Requirement by the end of the Investment Achievement Period ("Investment Creation Default"), then, following written notice from the

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Council, the Company shall repay a portion of the Grant funds expended in accordance with the Investment Shortfall Formula below:

- a. The "Investment Shortfall Formula" is equal to 25% of the Grant funds expended multiplied by Investment Shortfall Percentage.
- b. The "Investment Shortfall Percentage" is equal to 100% minus (the Company's Capital Investment (as defined below), divided by \$500,000,000).

"Company's Capital Investment" is defined as all capital investment (under the International Financial Reporting Standards or under the General Accepted Accounting Principles) made by the Company both (i) at the Project and (ii) otherwise within the State in connection with the Project and in infrastructure connected to the Project, but excluding all costs reimbursed to the Company through the Grant and any additional State grants. Any reference to capital investment shall be deemed a reference to the gross capital investment value at the time of acquisition or investment and shall not reflect any depreciation or write down of the book value. In the event that the Company, under either its internal policies or under the rules of the International Financial Reporting Standards, does not treat a cost(s) as a capital, but such cost(s) could be treated as capital under the Generally Accepted Accounting Principles, then such cost(s) shall qualify for the purposes of this Agreement as a capital investment.

12.2.2. Shortfall in Job Creation. In the event that the Company fails to meet the Minimum Job Requirement by the end of the Job Achievement Period ("Job Creation Default"), then, following written notice from the Council, the Company shall repay a portion of the Grant funds expended in accordance with the Job Shortfall Formula below.

- a. The "Job Shortfall Formula" is defined as 25% of the Grant funds expended multiplied by Job Shortfall Percentage.
- b. The "Job Shortfall Percentage" is 100% minus (the actual number of new, full-time jobs created by the Company in South Carolina, divided by the Minimum Job Requirement).

12.2.3 If required, repayments are due and payable by the applicable Due Date (as defined below) and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.

12.2.4 If the Company satisfies the Job Requirement and the Investment Requirement by the end of the Job Achievement Period or the Investment

Achievement Period, as applicable, it shall not have any repayment obligations under this Section 12.2.

12.3 Maintenance Period Requirements. As of each and every Reporting Date (defined below), the Company's capital investment both at the Project and otherwise within the State in connection with the Project may not be less than the Investment Requirement, and the number of jobs retained by the Company both at the Project and otherwise within the State in connection with the Project may not be less than the Minimum Job Requirement. If the Company fails to maintain the Investment Requirement or the Minimum Job Requirement as of any of the Reporting Dates for any year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, the Company will be required to repay a portion of the Grant funds expended in accordance with the formulas below. The Company's repayment obligation shall be calculated on each anniversary of the end of the Investment Achievement Period or the Job Achievement Period, as applicable (each a "Reporting Date") utilizing the monthly average for the immediately preceding 12 months of new, full-time jobs created and existing and the monthly average for the immediately preceding 12 months of investment maintained during the applicable year of the Investment Maintenance Period or the Job Maintenance Period, as applicable. For purposes of determining the monthly average, the Company may, after the end of the first year of the Investment Maintenance Period or the Job Maintenance Period, select a reasonable day, in its sole discretion, upon which such jobs and investment will be determined on a monthly basis. Thereafter, that day in the month shall apply for each applicable year for the remainder of such Maintenance Period. The pro-rata repayment obligation for failure to maintain the Minimum Job Requirement or the Investment Requirement during each year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, will be calculated as follows:

- a. "Job Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Job Shortfall Percentage as of the Reporting Date, of the relevant year.
- b. "Job Shortfall Percentage" shall be 100% minus (the number of full time jobs existing (i) at the Project and (ii) otherwise within the State in connection with the Project as of the Reporting Date divided by the Minimum Job Requirement);
- c. "Investment Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Investment Maintenance Shortfall Percentage as of the Reporting Date, of the relevant year.
- d. "Investment Maintenance Shortfall Percentage" shall be 100% minus (the Company's Capital Investment remaining at the Project as of the Reporting Date (without any adjustment for depreciation or write downs), divided by the Investment Requirement).

- 12.3.1 If required, repayments are due and payable on the applicable Due Date and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.
- 12.4 "Due Date," shall be defined as the 90th day following the expiration of the 12 month cure period as set forth in section 12.5 below.
- 12.5 Provisions for Cure. In the event that the Company defaults in job creation or investment obligations thereby creating a Job Creation Default and/or an Investment Creation Default, and the Company has received notice that a repayment shall be required, then commencing upon the date of such notice, the Company shall have an additional twelve (12) month period to cure such shortfall in new, full-time jobs or investment (during which time, any requirement for repayment shall be held in abeyance) and the date for repayment shall be so extended. In the event that the Company then cures such shortfall (i.e. creates additional new, full-time jobs or makes additional capital investment equal to the amount of the shortfall) within the 12 month cure period, the Company shall be deemed to have met such Minimum Job Requirement or Investment Requirement and no repayment pursuant to such cured default shall be due or owing.
- 12.6 Provisions for Repayments. In the event that the Company fails to cure a job creation or investment shortfall for which it had notice and opportunity to cure, or the Company has received proper written notice that it has failed to maintain the jobs or investment, then the Company shall tender such amount of repayment by the Due Date, which shall be deemed to commence upon the expiration of the 12 month cure period. The Company shall only pay the actual amount as calculated pursuant to the terms hereof and no additional payments or interest shall be due in connection with any such repayment.
- 13.0 Amendments. If (a) the Investment Requirement is not met or (b) the total number of full time jobs created is less than the Minimum Job Requirement or (c) the investment is not made or the jobs are not created within the Investment Achievement Period or the Job Achievement Period, as applicable, the Company may provide detailed documentation that a good faith effort was made to achieve both the Minimum Job Requirement and the Investment Requirement. To the extent that extenuating circumstances prevent the Company from fulfilling its commitments contained herein, and the Grantee and the Council, in their sole discretion, acknowledge such circumstances in writing, this Agreement may be modified in writing by mutual agreement of the parties.
- 14.0 Representations and Warranties. The Company hereby makes the following representations and warranties and acknowledges and agrees that such representations and warranties have been material to the Council's decision to enter into this Agreement and further agrees that each representation and warranty is true, accurate and complete in all material respects as of the date hereof and will remain true and correct in all material respects throughout the term of this Agreement.

- 14.1 Good Standing. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, has the power and authority to own its property and to carry on its business in each jurisdiction in which it does business, and has registered for and is duly qualified to conduct business in, and is in good standing in, the State of South Carolina.
- 14.2 Authority and Compliance. The Company has full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided herein. No consent or approval of any public authority or other third party is required as a condition to the validity of the Company's obligation under this Agreement, and the Company is in compliance with all laws and regulatory requirements to which it is subject.
- 14.3 No Conflicting Agreement. There is no charter, bylaw, stock provision, partnership agreement or other document pertaining to the organization, power or authority of the Company and no provision of any existing agreement, mortgage, deed of trust, indenture or contract binding on the Company or affecting the Company's property which would materially conflict with or in any way prevent the Company from executing, delivering, or carrying out the terms of this Agreement.
- 14.4 Litigation. To the best of the Company's knowledge, there is no proceeding involving the Company pending or threatened before any court or governmental authority, agency or arbitration authority which if adversely decided would materially affect the Company's ability to meet its obligations under this Agreement and conduct its operations at the Project.
- 14.5 Compliance with Laws. To the best of its knowledge, the Company is in material compliance with all federal, state and local laws, regulations and governmental requirements including, but not limited to, environmental laws and the applicable federal and state laws, executive orders and regulations concerning discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability, applicable to its facility including without limitation the property, business operations, employees, and transactions thereof.
- 14.6 Binding Agreement. Each part of this Agreement is a legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights. This Agreement has been signed by an authorized Company representative and such signature is recognized by the Company as legally binding.
- 15.0 Indemnification. The Company agrees to defend, indemnify, and hold the Council and the Grantee harmless from and against the costs of any litigation (including reasonable attorney's fees) arising from this Agreement or the Assistance provided by the Council to the Grantee for the direct or indirect benefit of the Company, except to the extent such litigation is caused by the negligence or willful misconduct of the Council or the Grantee;

provided, however, that the Company's liability pursuant to this indemnification provision shall be limited by the provisions of the SC Tort Claims Act, Section 15-78-10 et seq. of the S.C. Code of Laws, 1976, as amended (the "Code"), to the extent those provisions provide full or limited immunity to governmental parties from third party claims and prohibit recovery of punitive or exemplary damages. In the event that any litigation is threatened or arises from this Agreement or the Assistance provided hereunder, then, to the extent that the Company is required to defend, indemnify or hold the Council or the Grantee harmless, such obligations of the Company shall be conditioned upon the Company's right to appear in such litigation and to select and direct the legal counsel engaged in the defense of the Council or the Grantee, as applicable. This provision shall survive the termination of this Agreement for any claim arising during the term of the Agreement.

- 16.0 Assignability. The terms of this Agreement may not be assigned to another entity without the written permission of the Grantee and the Council, which consent shall not be unreasonably withheld, except that the Company may assign this Agreement to an Affiliate without the prior written consent of the Grantee and the Council provided that the Company notifies the Grantee and the Council within thirty (30) days following such assignment. In such case, the Affiliate shall assume all of the Company's rights and responsibilities hereunder and the Company shall be fully released herefrom.
- 17.0 Notification. The Company must notify the Grantee and the Council if there are any changes in the status of the Company that will materially impact or alter the Company's ability to comply with this Agreement. All notices required or otherwise provided under this Agreement shall be deemed made upon mailing by first class mail, postage prepaid, and addressed to the other party as follows:

Notices to the Council shall be sent to:

Ms. Dale Culbreth  
Senior Program Manager, CCED Programs  
South Carolina Coordinating Council for Economic Development  
South Carolina Department of Commerce  
1201 Main Street, Suite 1600  
Columbia, SC 29201

Notices to Grantee shall be sent to:

Mr. R. Carlisle Roddey  
Supervisor  
Chester County  
Post Office Box 580  
Chester, South Carolina 29706

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With a copy to:

Ms. Joan Elizabeth Winters  
Winters Law Firm  
105 Main Street  
Chester, South Carolina 29706

Notices to Company shall be sent to:

[REDACTED]  
Off Tire Holdings (USA), Ltd.  
c/o 10404 Sixth Street  
Rancho Cucamonga, CA 91730

With a copy to:

[REDACTED]

- 18.0 Severability. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.
- 19.0 Governing Law and Jurisdiction. This Agreement is made under and shall be construed in accordance with the laws of the State, without regard to conflicts of laws principles. By executing this Agreement, the Company also agrees to submit to the jurisdiction of the courts of the State for all matters arising hereunder. In the event of a dispute, the Council shall have standing to represent the State.
- 20.0 Freedom of Information. The Company understands and agrees that (i) the Grantee and the Council are each a public body within the meaning of the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the Code (the "FOIA Act"); (ii) the Grantee and the Council are each required to comply with the provisions of the FOIA Act by disclosing certain public records upon receipt of a written request; and (iii) after execution of this Agreement, this Agreement and all documents and other information incidental to this Agreement are subject to disclosure pursuant to Sections 30-4-40(a)(9) and 30-4-40(a)(5) of the Code upon request. The Grantee and the Council each agree to utilize applicable exemptions of FOIA Act located in Section 30-4-40 of the Code to the maximum extent authorized by law to protect confidential information related to this Agreement and the Project. If disclosure of this Agreement and related information is required, pursuant to Section 30-4-40(a)(5)(e) of the Code, the Council agrees to redact any information in this Agreement or any documents incidental thereto that is clearly marked by the Company as confidential and proprietary and has been provided to the Council for economic development or contract negotiation purposes. However, the Grantee, the Council, and their respective members, employees, and staff shall not be

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liable for the inadvertent release of any information contained in the Agreement or any other documents related to the Project, absent gross negligence or willful misconduct.

To the extent an action at law or equity is brought to require the disclosure of any information related to the Project, the Council reserves the right to include the Company in such action and the Company hereby agrees to bear all costs associated with defending such action.

21.0 Events of Default. During the term of this Agreement, the following shall constitute events of default by the Company under this Agreement:

- 21.1 any representation or warranty made by the Company herein that is false or misleading in any material respect at the time made;
- 21.2 failure of the Company to comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCP funds and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.3 failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.4 the Company's consenting to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or admitting in writing its inability to pay its debts generally as they come due, or making a general assignment for the benefit of creditors;
- 21.5 the Company's filing a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any United States bankruptcy laws (as now or hereafter in effect), or, by voluntary petition, answering or consenting, seeking relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;
- 21.6 the entry of an order, judgment, or decree in any proceeding by any court of competent jurisdiction appointing, without the consent of the Company, a

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receiver, trustee or liquidator of the Company or of any substantial part of its property, or sequestering any substantial part of its property, and any such order, judgment or decree of appointment or sequestration remaining in force undismitted, unstayed, or unvacated for a period of 180 days after the date of entry thereof; or

- 21.7 a petition against the Company in a proceeding under applicable United States bankruptcy laws or other United States insolvency laws as now or hereafter in effect is filed and a final, non-appealable order for relief is entered in connection therewith, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Company, any court of competent jurisdiction shall assume jurisdiction, custody or control of it or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or untermiated for a period of 180 days.

- 22.0 Remedies. If any such event of default shall occur and be continuing, then the Council shall, to the extent permitted by law and without notice of any kind to the Company (except to the extent required by law or as expressly required herein), seek to enforce the rights of the Council hereunder by exercising any or all of the following remedies:

- 22.1 Refrain from extending any further assistance or Grant funds until such time as the Company is in full compliance with the terms and conditions of this Agreement;
- 22.2 Require repayment of all or a portion of the funds expended under this Agreement;
- 22.3 Cancel, terminate or suspend this Agreement; or
- 22.4 Take such other reasonable action as may be necessary to protect its rights and interests hereunder.

- 23.0 Additional Remedial Provisions.

- 23.1 No remedy herein conferred or reserved to the Council is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. A waiver of any particular breach or default under any provision hereof shall not operate as a waiver of any further or subsequent breach or default under such provision. The remedies herein provided are cumulative and not exclusive of any remedies provided by law, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Council to exercise any

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remedy reserved to them in this Agreement, it shall not be necessary to give notice other than such notice as may be required in this Agreement.

23.2 Neither the Grantee nor the Council shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company if an event of default shall occur hereunder.

24.0 Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

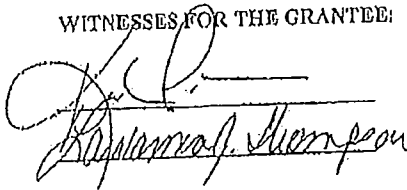
(Signatures on following page)

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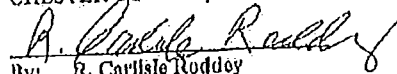
IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed by their authorized representative under seal to be effective as of the date first written above.

WITNESSES FOR THE GRANTEE:

GRANTEE:

  
William J. Thompson

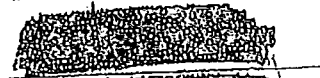
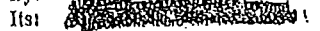
CHESTER COUNTY, SOUTH CAROLINA

  
By: R. Carlisle Roddey  
County Supervisor

WITNESSES FOR THE COMPANY:

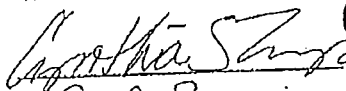
GITI TIRE HOLDINGS (USA) LTD.

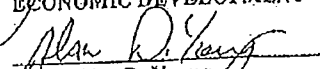


  
By:   
Its: 

WITNESSES FOR THE COUNCIL:

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

  
Judith Burman

  
By: Alan D. Young  
Executive Director

FIRST AMENDMENT TO THE PERFORMANCE AGREEMENT  
(GOVERNOR'S CLOSING FUND ASSISTANCE)

This First Amendment to the Performance Agreement (the "First Amendment") is made to be effective the 4<sup>th</sup> day of September, 2014 by and among Chester County, a political subdivision of the state of South Carolina and hereinafter referred to as the "Grantee", Old Tire Holdings (USA), Ltd., hereinafter referred to as the "Company", and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council";

WITNESSETH

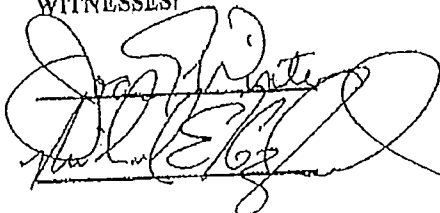
That for and in consideration of the mutual covenants and agreements herein contained, the above parties do hereby agree as follows:

- 1.0 First Amendment to Agreement. The parties recognize that this First Amendment modifies and amends the Performance Agreement ("Agreement") made and entered into by the parties to be effective the 5<sup>th</sup> day of June, 2014. The terms of the Agreement that are not inconsistent with the terms contained herein shall remain in full force and effect, and any such terms that are not inconsistent shall be incorporated herein for all practical purposes.
- 2.0 On September 4, 2014, the Council awarded an additional Five Hundred Fifty Thousand and No/100 Dollars (\$550,000) in grant funds so that the total Grant amount set forth in Section 1.0 of the Agreement is hereby increased to a total amount of Thirty Six Million Three Hundred Twenty Five Thousand and No/100 Dollars (\$36,325,000).

(Signature Page Follows)

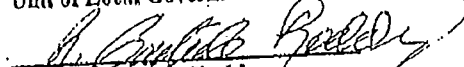
IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:

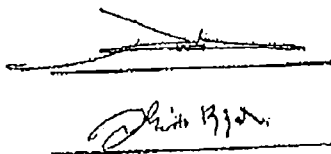


GRANTEE:

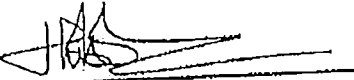
Chester County  
Unit of Local Government

  
By: R. Carlisle Roddey  
Its: County Supervisor

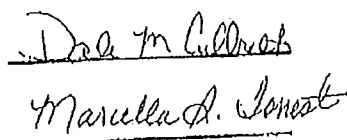
WITNESSES:



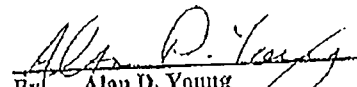
GITI TIRE HOLDINGS (USA) LTD.

  
By: Sylvia Soerijadl  
Its: Corporate Secretary

WITNESSES:



COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

  
By: Alan D. Young  
Its: Executive Director

IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
*Oliver Bjork*  
\_\_\_\_\_

WITNESSES:

*Dale M. Culbert*  
\_\_\_\_\_  
*Marilla A. Jensen*  
\_\_\_\_\_

GRANTEE:

Chester County  
Unit of Local Government

By: R. Carlisle Roddey  
Its: County Supervisor

GITI TIRE HOLDINGS (USA) LTD.

*[Signature]*  
By: Sylvia Soerijadi  
Its: Corporate Secretary

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

*Alan D. Young*  
By: Alan D. Young  
Its: Executive Director

SOUTH CAROLINA DEPARTMENT OF COMMERCE

RECEIVED

SEP 08 2014

SC DEPT. OF COMMERCE  
FINANCE DIVISION

To: SC Office of the Comptroller General  
From: Dale Culbreth  
Date: 09/08/2014  
Subject: Request for Payment  
Please Pay: Chester County

CHECK MAILED

SEP 10 2014

Bank Acct Number:

Please process the following federal or state grant fund request for payment. Your cooperation and assistance in this matter is appreciated.

IDIS Activity Nbr: CL

Dale Culbreth  
Dale Culbreth  
Department of Grants Administration

Vendor Number: 7000030029

FEIN: 670000331

Amount: \$ 750,000.00

Grant Number: C-14-2371

Year: 1006 Not Relevant

SCEIS Fund: 30400000

Fund Type: RIF  
RIF

Cost Center: P320DA0010

Functional Area: P320\_0004  
Coord. Council Eco.

Object Code: 6170210000

CCD Code: 1012

SC Department of Commerce  
Department of Grants Administration  
1201 Main Street Columbia, South Carolina 29201  
(803) 737-0400 Fax (803) 737-0741

## Rural Infrastructure Fund

### Request for Payment

Grantee: Chester County

Grant #: RIF #C14-2371--Chester County

GTL Tira USA

Date: Thursday, September 4, 2014

Federal ID #: 57-6000331

Reimbursement Request #: 1

Final Pay Request Yes ☐ No ☒

Contact Person: Kathie Parker

Phone: 803-377-1216

Address: 3200 Commerce Drive Suite U

E-mail: kparker@choosacheater.com

City/State/Zip: Richburg, SC 29729

#### Funds Requested:

| Budget Item          | Amt Approved  | Amt Previously Requested | Amt Requested this Draw | Remaining Balance |
|----------------------|---------------|--------------------------|-------------------------|-------------------|
| Engineering Services | \$ 38,775,000 | \$0                      | \$750,000               | \$ 38,025,000     |
|                      | \$            | \$                       | \$                      | \$                |
|                      | \$            | \$                       | \$                      | \$                |
|                      | \$            | \$                       | \$                      | \$                |
|                      | \$            | \$                       | \$                      | \$                |
|                      | \$            | \$                       | \$                      | \$                |

**Total Amount Requested \$750,000**

The above requested amount is for reimbursement of costs incurred by the grantee for the approved Set-Aside grant project. Documentation (i.e., paid invoices, AIA documents, etc.) supporting this draw request and sufficient proof of payment are attached.

Approved by:

*[Signature]*  
(Authorized Signature)

County Supervisor

(Title)

Submit to:

SC Department of Commerce  
Coordinating Council for Economic  
Development  
Attn: Judi Blumman  
1201 Main Street, Suite 1600  
Columbia, SC 29201

CCED Use Only:

Appropriate documentation submitted:

Documentation submitted supporting approved budget:

Sufficient proof of payment provided:

Amount approved for payment:

\$750,000

Approved by:

*[Signature]*



---

**Clawson, States**

**From:** Brown, Stephen <stephen\_brown@gspnet.com>  
**Sent:** Wednesday, October 29, 2014 2:59 PM  
**To:** Susan Cok (scok@chestercounty.org)  
**Cc:** Clyde Fish; Clawson, States  
**Subject:** Gilt - Mass Grading Prequalification  
**Attachments:** Proqualification Scoring Cals Tally-10-29-14.pdf

Susan,

We have had four scorers review the 18 contractor qualifications packages. We tallied the scores and have come up with a list of 5 contractors (per the original solicitation) for which to send an invitation to bid. Our group had a conference call yesterday to review and finalize. That tally is attached.

We will begin the process of notifying both the successful and the unsuccessful contractors.

Let me know if you have any questions.

Thanks

**Stephen A. Brown, P.E.**  
Principal  
Land Planning and Design

**GRESHAM, SMITH AND PARTNERS**  
*Architecture, Engineering, Interiors, Planning*

1400 Nashville City Center, 511 Union Street  
Nashville, TN 37219-1733  
[P] 615.770.8527  
[M] 615.557.8530  
[F] 866.712.3370

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Grt Tire Mass Grading Contractor Prequalification Scoring Sheet

|                | Byrde | Borgs | Brad Gale | Bristol | Gay | Cooper | Barnhart | Enrich | Glover | Hoopough | J R | Landmark | Lineberger | Mazella | Morgan Corp | Phillips & | Robertson | Strangie |
|----------------|-------|-------|-----------|---------|-----|--------|----------|--------|--------|----------|-----|----------|------------|---------|-------------|------------|-----------|----------|
| Score #1       | 70    | 41    | 72        | 49      | 72  | 49     | 61       | 72     | 64     | 61       | 45  | 54       | 40         | 28      | 81          | 75         | 63        | 60       |
| Score #2       | 56    | 27    | 74        | 44      | 81  | 49     | 35       | 72     | 56     | 61       | 46  | 57       | 38         | 26      | 85          | 76         | 80        | 62       |
| Score #3       | 73    | 45    | 68        | 53      | 75  | 48     | 51       | 80     | 63     | 51       | 48  | 78       | 41         | 29      | 75          | 82         | 65        | 65       |
| Score #4       | 77    | 48    | 75        | 56      | 79  | 50     | 64       | 83     | 61     | 62       | 50  | 72       | 41         | 25      | 75          | 80         | 66        | 64       |
| Total Score    | 276   | 182   | 289       | 202     | 303 | 186    | 221      | 320    | 246    | 245      | 193 | 257      | 160        | 108     | 316         | 314        | 274       | 251      |
| Score by total |       |       | 5         |         | 4   |        |          | 1      |        |          |     |          |            |         | 2           | 3          |           |          |

## Clawson, States

From: Brown, Stephen <stephen\_brown@gspnet.com>  
Sent: Friday, October 31, 2014 4:44 PM  
To: Clyde Fish; Susan Cok (scok@chestercounty.org)  
Cc: Clawson, States; Dillard, George; Plaug, Hal  
Subject: RE: Gilt Tire - Mass Grading Bid Package  
Attachments: Transfer - Mass Grading Bid Package.pdf

Mass grading bid packages were just transmitted. A copy of the transmittal log showing all recipients and all documents transmitted is attached. I will generate a log of downloads after the bidders have had an opportunity to download.

Have a good weekend all.

Stephen A. Brown, P.E.

GRESHAM, SMITH AND PARTNERS  
(P) 615.770.8527  
(M) 615.557.8530

From: Brown, Stephen  
Sent: Friday, October 31, 2014 12:49 PM  
Cc: Clyde Fish; Susan Cok (scok@chestercounty.org); Dillard, George; Hal Plaug (hal\_plaug@gspnet.com)  
Subject: Gilt Tire - Mass Grading Bid Package  
Importance: High

Prospective Bidders,

Mass grading bid packages for the Gilt Tire project will be issued electronically this afternoon. Hard copies will not be provided.

Please acknowledge receipt of this email to verify your correct email address. If you would like another individual within your company to have access to download the electronic submission, please provide up to one additional email address.

Please do not respond to this email with information requests regarding project specifics. Information request procedures are specified within the contract documents.

Thank you.

Stephen A. Brown, P.E.

Principal  
Land Planning and Design

GRESHAM, SMITH AND PARTNERS  
*Architecture, Engineering, Interiors, Planning*

1400 Nashville City Center, 511 Union Street  
Nashville, TN 37219-1733  
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(M) 615.557.8530  
(F) 666.712.3370

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GRESHAM  
SMITH AND  
PARTNERS

File Transfer

Gresham, Smith and Partners | 1400 Nashville City Center 511 Union Street Nashville TN 37219 United States

PROJECT GII Tire - New Passenger Car Tire Plant  
40303.00

EXPIRES 11/15/2014

SUBJECT Mass Grading Bld Package

PROJECT  
MANAGER Hal Plaag

VIA Info Exchange

FROM

| NAME          | COMPANY                     | EMAIL                    | PHONE        |
|---------------|-----------------------------|--------------------------|--------------|
| Stephen Brown | Gresham, Smith and Partners | stephen_brown@gspnet.com | 615-770-8627 |

TO

| NAME                             | COMPANY          | EMAIL                            | PHONE          |
|----------------------------------|------------------|----------------------------------|----------------|
| Andy Painter                     | Clary Hood, Inc. | andy@claryhood.com               | (864) 679-8881 |
| Tom Addley                       | Clary Hood, Inc. | tom@claryhood.com                | (864) 679-8881 |
| ron@bradcoleconstruction.com     |                  | ron@bradcoleconstruction.com     |                |
| sgarmon@bradcoleconstruction.com |                  | sgarmon@bradcoleconstruction.com |                |
| dlago@bradcoleconstruction.com   |                  | dlago@bradcoleconstruction.com   |                |
| Justin@claryhood.com             |                  | Justin@claryhood.com             |                |
| alylos@eulaw.us                  |                  | alylos@eulaw.us                  |                |
| kclark@eulaw.us                  |                  | kclark@eulaw.us                  |                |
| RBates@Morgan-Corp.com           |                  | RBates@Morgan-Corp.com           |                |
| MSimon@Morgan-Corp.com           |                  | MSimon@Morgan-Corp.com           |                |
| gbaumgarner@morgan-corp.com      |                  | gbaumgarner@morgan-corp.com      |                |
| esalterfield@pandj.com           |                  | esalterfield@pandj.com           |                |
| dorr@pandj.com                   |                  | dorr@pandj.com                   |                |

REMARKS: Please follow the link indicated to download the bid package for GII Tire Mass Grading.

Thank you.

CHANGE LOG

| EVENT TYPE | PROJECT TEAM MEMBER | DATE       | TIME    |
|------------|---------------------|------------|---------|
| Created    | Stephen Brown       | 10/31/2014 | 3:40 PM |

# File Transfer

|                           |               |            |         |
|---------------------------|---------------|------------|---------|
| Background upload started | Stephon Brown | 10/31/2014 | 3:40 PM |
|---------------------------|---------------|------------|---------|

## TRANSFERRED FILES

| NAME                                                                                                                             | TYPE                   | DATE       | TIME     | SIZE      |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------|------------|----------|-----------|
| Issued for Bld - 10-31-14\Attachments\Geotechnical Report\14-032 Gill Tire - Geotechnical Report (bldg pad and p lot 073114).pdf | Adobe Acrobat Document | 8/1/2014   | 2:05 PM  | 20,269 KB |
| Issued for Bld - 10-31-14\Attachments\SWPPP\40303_DHEC_SWPPP-CGP.pdf                                                             | Adobe Acrobat Document | 10/31/2014 | 2:24 PM  | 874 KB    |
| Issued for Bld - 10-31-14\Attachments\SWPPICGP-permit.pdf                                                                        | Adobe Acrobat Document | 10/30/2014 | 10:57 PM | 552 KB    |
| Issued for Bld - 10-31-14\Attachments\SWPPP\USAO OE Permit\01Nelson\wdo General Conditions.pdf                                   | Adobe Acrobat Document | 10/3/2014  | 1:12 PM  | 12 KB     |
| Issued for Bld - 10-31-14\Attachments\SWPPP\USAO OE Permit\condillon 39.pdf                                                      | Adobe Acrobat Document | 10/3/2014  | 1:12 PM  | 44 KB     |
| Issued for Bld - 10-31-14\Attachments\SWPPP\USAO OE Permit\document\2014-09-05-162003.pdf                                        | Adobe Acrobat Document | 10/3/2014  | 1:08 PM  | 1,554 KB  |
| Issued for Bld - 10-31-14\Attachments\SWPPP\USAO OE Permit\USAC 2000-30774-5Z.pdf                                                | Adobe Acrobat Document | 10/3/2014  | 1:12 PM  | 180 KB    |
| Issued for Bld - 10-31-14\Plans\C000 COVER SHEET.pdf                                                                             | Adobe Acrobat Document | 10/31/2014 | 12:08 PM | 2,176 KB  |
| Issued for Bld - 10-31-14\Plans\C001 GENERAL NOTES.pdf                                                                           | Adobe Acrobat Document | 10/31/2014 | 12:08 PM | 1,330 KB  |
| Issued for Bld - 10-31-14\Plans\C100 EXISTING CONDITIONS.pdf                                                                     | Adobe Acrobat Document | 10/31/2014 | 12:06 PM | 3,409 KB  |
| Issued for Bld - 10-31-14\Plans\C101 SOIL MAP AND BORING LOCATIONS.pdf                                                           | Adobe Acrobat Document | 10/31/2014 | 12:06 PM | 756 KB    |
| Issued for Bld - 10-31-14\Plans\C200 OVERALL SITE LAYOUT.pdf                                                                     | Adobe Acrobat Document | 10/31/2014 | 12:02 PM | 1,040 KB  |
| Issued for Bld - 10-31-14\Plans\C201 ROAD PLAN AND PROFILE.pdf                                                                   | Adobe Acrobat Document | 10/31/2014 | 12:01 PM | 807 KB    |
| Issued for Bld - 10-31-14\Plans\C202 ROAD PLAN AND PROFILE.pdf                                                                   | Adobe Acrobat Document | 10/31/2014 | 11:58 AM | 924 KB    |
| Issued for Bld - 10-31-14\Plans\C203 ROAD PLAN AND PROFILE.pdf                                                                   | Adobe Acrobat Document | 10/31/2014 | 11:57 AM | 1,080 KB  |
| Issued for Bld - 10-31-14\Plans\C204 ROAD PLAN AND PROFILE.pdf                                                                   | Adobe Acrobat Document | 10/31/2014 | 11:56 AM | 1,123 KB  |
| Issued for Bld - 10-31-14\Plans\C205 ROAD PLAN AND PROFILE.pdf                                                                   | Adobe Acrobat Document | 10/31/2014 | 11:50 AM | 1,021 KB  |
| Issued for Bld - 10-31-                                                                                                          | Adobe Acrobat          | 10/31/2014 | 11:40 AM | 1,267 KB  |

## File Transfer

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| Issued for Bid - 10-31-14\Plans\C208 STREAM CROSSING PLAN AND PROFILE.pdf              | Adobe Acrobat Document | 10/31/2014 | 2:30 PM  | 1,017 KB |
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| Issued for Bid - 10-31-14\Plans\C402 POST DEVELOPMENT DRAINAGE AREA PLAN.pdf           | Adobe Acrobat Document | 10/31/2014 | 12:56 PM | 3,094 KB |
| Issued for Bid - 10-31-14\Plans\C403 CULVERT DRAINAGE PLAN.pdf                         | Adobe Acrobat Document | 10/31/2014 | 12:53 PM | 3,647 KB |
| Issued for Bid - 10-31-14\Plans\C601 CULVERT PROFILES.pdf                              | Adobe Acrobat Document | 10/31/2014 | 12:49 PM | 1,109 KB |
| Issued for Bid - 10-31-14\Plans\C602 POND OUTLET PROFILE AND STORM STRUCTURE TABLE.pdf | Adobe Acrobat Document | 10/31/2014 | 12:47 PM | 740 KB   |
| Issued for Bid - 10-31-                                                                | Adobe Acrobat          | 10/31/2014 | 1:30 PM  | 1,840 KB |

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| 14\Plans\C801 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf                        | Document               |            |         |          |
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| Issued for Bld - 10-31-14\Plans\C803 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:20 PM | 3,091 KB |
| Issued for Bld - 10-31-14\Plans\C804 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:28 PM | 4,211 KB |
| Issued for Bld - 10-31-14\Plans\C805 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:28 PM | 3,805 KB |
| Issued for Bld - 10-31-14\Plans\C806 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:27 PM | 3,910 KB |
| Issued for Bld - 10-31-14\Plans\C807 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:27 PM | 4,440 KB |
| Issued for Bld - 10-31-14\Plans\C808 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:28 PM | 3,374 KB |
| Issued for Bld - 10-31-14\Plans\C809 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:26 PM | 4,464 KB |
| Issued for Bld - 10-31-14\Plans\C810 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:25 PM | 3,770 KB |
| Issued for Bld - 10-31-14\Plans\C811 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:24 PM | 3,803 KB |
| Issued for Bld - 10-31-14\Plans\C812 INITIAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:24 PM | 3,484 KB |
| Issued for Bld - 10-31-14\Plans\C701 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL     | Adobe Acrobat Document | 10/31/2014 | 1:22 PM | 1,876 KB |

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| PLAN.pdf<br>Issued for Bid - 10-31-14\Plans\0702 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 1:21 PM | 2,080 KB |
| Issued for Bid - 10-31-14\Plans\0703 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:21 PM | 2,638 KB |
| Issued for Bid - 10-31-14\Plans\0704 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:20 PM | 3,230 KB |
| Issued for Bid - 10-31-14\Plans\0705 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:20 PM | 2,681 KB |
| Issued for Bid - 10-31-14\Plans\0706 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:19 PM | 3,346 KB |
| Issued for Bid - 10-31-14\Plans\0707 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:19 PM | 3,998 KB |
| Issued for Bid - 10-31-14\Plans\0708 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:18 PM | 3,449 KB |
| Issued for Bid - 10-31-14\Plans\0709 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:17 PM | 3,880 KB |
| Issued for Bid - 10-31-14\Plans\0710 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:17 PM | 3,011 KB |
| Issued for Bid - 10-31-14\Plans\0711 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:16 PM | 3,062 KB |
| Issued for Bid - 10-31-14\Plans\0712 INTERMEDIATE EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf             | Adobe Acrobat Document | 10/31/2014 | 1:13 PM | 2,831 KB |
| Issued for Bid - 10-31-14\Plans\0801 FINAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf                    | Adobe Acrobat Document | 10/31/2014 | 3:31 PM | 1,417 KB |
| Issued for Bid - 10-31-14\Plans\0802 FINAL                                                                     | Adobe Acrobat Document | 10/31/2014 | 3:31 PM | 1,002 KB |



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| EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf                                            |                        |            |          |          |
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| Issued for Bid - 10-31-14\Plans\C804 FINAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 3:32 PM  | 3,238 KB |
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| Issued for Bid - 10-31-14\Plans\C808 FINAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 3:34 PM  | 2,949 KB |
| Issued for Bid - 10-31-14\Plans\C809 FINAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 3:36 PM  | 3,167 KB |
| Issued for Bid - 10-31-14\Plans\C810 FINAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 3:35 PM  | 2,782 KB |
| Issued for Bid - 10-31-14\Plans\C811 FINAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 3:36 PM  | 2,764 KB |
| Issued for Bid - 10-31-14\Plans\C812 FINAL EROSION PREVENTION AND SEDIMENT CONTROL PLAN.pdf | Adobe Acrobat Document | 10/31/2014 | 3:37 PM  | 2,600 KB |
| Issued for Bid - 10-31-14\Plans\C901 SITE DETAILS.pdf                                       | Adobe Acrobat Document | 10/31/2014 | 12:48 PM | 990 KB   |
| Issued for Bid - 10-31-14\Plans\C902 SITE DETAILS.pdf                                       | Adobe Acrobat Document | 10/31/2014 | 12:46 PM | 1,191 KB |
| Issued for Bid - 10-31-14\Plans\C903 SITE DETAILS.pdf                                       | Adobe Acrobat Document | 10/31/2014 | 12:46 PM | 1,325 KB |
| Issued for Bid - 10-31-                                                                     | Adobe Acrobat          | 10/31/2014 | 12:44 PM | 360 KB   |

## File Transfer

|                                                                                                  |                        |            |          |          |
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| 14\Plans\004 SITE DETAILS.pdf                                                                    | Document               |            |          |          |
| Issued for Bid - 10-31-14\Specifications\00-0000-Cover.pdf                                       | Adobe Acrobat Document | 10/30/2014 | 8:11 AM  | 57 KB    |
| Issued for Bid - 10-31-14\Specifications\00-0107 Seals Page.pdf                                  | Adobe Acrobat Document | 10/31/2014 | 10:50 AM | 68 KB    |
| Issued for Bid - 10-31-14\Specifications\00-0110-Table of Contents.pdf                           | Adobe Acrobat Document | 10/31/2014 | 2:38 PM  | 143 KB   |
| Issued for Bid - 10-31-14\Specifications\00-1118-Invitation to Bid.pdf                           | Adobe Acrobat Document | 10/31/2014 | 10:18 AM | 127 KB   |
| Issued for Bid - 10-31-14\Specifications\00-2113GS-Instructions to Bidders.pdf                   | Adobe Acrobat Document | 10/31/2014 | 10:43 AM | 163 KB   |
| Issued for Bid - 10-31-14\Specifications\00-3132-Geotechnical Data.pdf                           | Adobe Acrobat Document | 10/31/2014 | 10:17 AM | 126 KB   |
| Issued for Bid - 10-31-14\Specifications\00-4100-Bid Form.pdf                                    | Adobe Acrobat Document | 10/30/2014 | 8:34 AM  | 160 KB   |
| Issued for Bid - 10-31-14\Specifications\00-6000-Contractor Forms and Supplements (AIA-2007).pdf | Adobe Acrobat Document | 10/30/2014 | 9:35 AM  | 68 KB    |
| Issued for Bid - 10-31-14\Specifications\00-6000-Standard Form of Agreement-A101-2007.pdf        | Adobe Acrobat Document | 10/30/2014 | 1:53 PM  | 2,428 KB |
| Issued for Bid - 10-31-14\Specifications\00-7200-General Conditions.pdf                          | Adobe Acrobat Document | 10/30/2014 | 9:35 AM  | 90 KB    |
| Issued for Bid - 10-31-14\Specifications\00-7200-General Conditions-A201-2007.pdf                | Adobe Acrobat Document | 10/30/2014 | 2:19 PM  | 813 KB   |
| Issued for Bid - 10-31-14\Specifications\01-1000-Summary.pdf                                     | Adobe Acrobat Document | 10/30/2014 | 9:38 AM  | 116 KB   |
| Issued for Bid - 10-31-14\Specifications\01-2200-Unit Prices.pdf                                 | Adobe Acrobat Document | 10/30/2014 | 9:38 AM  | 121 KB   |
| Issued for Bid - 10-31-14\Specifications\01-2300-Alternates.pdf                                  | Adobe Acrobat Document | 10/30/2014 | 9:42 AM  | 113 KB   |
| Issued for Bid - 10-31-14\Specifications\01-2600-Contract Modification Procedures.pdf            | Adobe Acrobat Document | 10/30/2014 | 9:43 AM  | 120 KB   |
| Issued for Bid - 10-31-14\Specifications\01-2800-Payment Procedures.pdf                          | Adobe Acrobat Document | 10/30/2014 | 9:45 AM  | 124 KB   |
| Issued for Bid - 10-31-14\Specifications\01-3100-Project Mgmt and Coord.pdf                      | Adobe Acrobat Document | 10/30/2014 | 9:46 AM  | 128 KB   |
| Issued for Bid - 10-31-14\Specifications\01-3200-Construction Progress Documentation.pdf         | Adobe Acrobat Document | 10/30/2014 | 9:48 AM  | 125 KB   |
| Issued for Bid - 10-31-14\Specifications\01-3233-                                                | Adobe Acrobat Document | 10/30/2014 | 9:49 AM  | 113 KB   |

## File Transfer

|                                                                                                        |                        |            |          |        |
|--------------------------------------------------------------------------------------------------------|------------------------|------------|----------|--------|
| Photographic Documentation.pdf                                                                         |                        |            |          |        |
| Issued for Bid - 10-31-14\Specifications\01-3300 Submittals Procedure.pdf                              | Adobe Acrobat Document | 10/30/2014 | 9:50 AM  | 129 KB |
| Issued for Bid - 10-31-14\Specifications\01-4000 Quality Requirements.pdf                              | Adobe Acrobat Document | 10/30/2014 | 9:55 AM  | 138 KB |
| Issued for Bid - 10-31-14\Specifications\01-5000 Temporary Facilities and Controls.pdf                 | Adobe Acrobat Document | 10/30/2014 | 1:21 PM  | 143 KB |
| Issued for Bid - 10-31-14\Specifications\01-5713 Temporary Erosion Prevention and Sediment Control.pdf | Adobe Acrobat Document | 10/31/2014 | 10:17 AM | 211 KB |
| Issued for Bid - 10-31-14\Specifications\01-7300 Execution.pdf                                         | Adobe Acrobat Document | 10/30/2014 | 8:08 AM  | 117 KB |
| Issued for Bid - 10-31-14\Specifications\01-7839 Project Record Documents.pdf                          | Adobe Acrobat Document | 10/30/2014 | 9:59 AM  | 127 KB |
| Issued for Bid - 10-31-14\Specifications\31-1000 Site Clearing.pdf                                     | Adobe Acrobat Document | 10/30/2014 | 10:04 AM | 124 KB |
| Issued for Bid - 10-31-14\Specifications\31-2000 Earth moving.pdf                                      | Adobe Acrobat Document | 10/30/2014 | 10:03 AM | 144 KB |
| Issued for Bid - 10-31-14\Specifications\33-4100 Storm Drainage Piping.pdf                             | Adobe Acrobat Document | 10/30/2014 | 10:08 AM | 127 KB |

**COPIES:**

George Dillard  
Clyde Fish  
Susan Cok  
Michael Campbell  
Hal Plaag

(Gresham, Smith and Partners)  
(GITI Tire Manufacturing (USA) LTD.)  
(Chester County)  
(Gresham, Smith and Partners)  
(Gresham, Smith and Partners)

**Clawson, States**

From: Brown, Stephen <stephen.brown@gspnet.com>  
Sent: Tuesday, November 04, 2014 6:09 PM  
To: Clyde Fish; Susan Cok (scok@chestercounty.org)  
Cc: Clawson, States; Dillard, George; Plaag, Hal  
Subject: RE: Glti Tire - Mass Grading Bid Package  
Attachments: NewformaReport\_2014\_11\_04\_17.04.pdf

The attached report will show that at least one contact from each company has successfully downloaded the bid package.

**Stephen A. Brown, P.E.**

GRESHAM, SMITH AND PARTNERS  
(P) 615.770.8527  
(M) 615.557.0530

From: Brown, Stephen  
Sent: Friday, October 31, 2014 3:44 PM  
To: Clyde Fish; Susan Cok (scok@chestercounty.org)  
Cc: Clawson, States; Dillard, George; Hal Plaag (hal\_plaag@gspnet.com)  
Subject: RE: Glti Tire - Mass Grading Bid Package

Mass grading bid packages were just transmitted. A copy of the transmittal log showing all recipients and all documents transmitted is attached. I will generate a log of downloads after the bidders have had an opportunity to download.

Have a good weekend all.

**Stephen A. Brown, P.E.**

GRESHAM, SMITH AND PARTNERS  
(P) 615.770.8527  
(M) 615.557.0530

From: Brown, Stephen  
Sent: Friday, October 31, 2014 12:49 PM  
Cc: Clyde Fish; Susan Cok (scok@chestercounty.org); Dillard, George; Hal Plaag (hal\_plaag@gspnet.com)  
Subject: Glti Tire - Mass Grading Bid Package  
Importance: High

Prospective Bidders,

Mass grading bid packages for the Glti Tire project will be issued electronically this afternoon. Hard copies will not be provided.

Please acknowledge receipt of this email to verify your correct email address. If you would like another individual within your company to have access to download the electronic submission, please provide up to one additional email address.

Please do not respond to this email with information requests regarding project specifics. Information request procedures are specified within the contract documents.

Thank you.

**Stephen A. Brown, P.E.**  
Principal  
Land Planning and Design

**GRESHAM, SMITH AND PARTNERS**  
*Architecture, Engineering, Interiors, Planning*

1400 Nashville City Center, 511 Union Street  
Nashville, TN 37219-1733  
(P) 615.770.8527  
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[Facebook](#), [Twitter](#), [LinkedIn](#)

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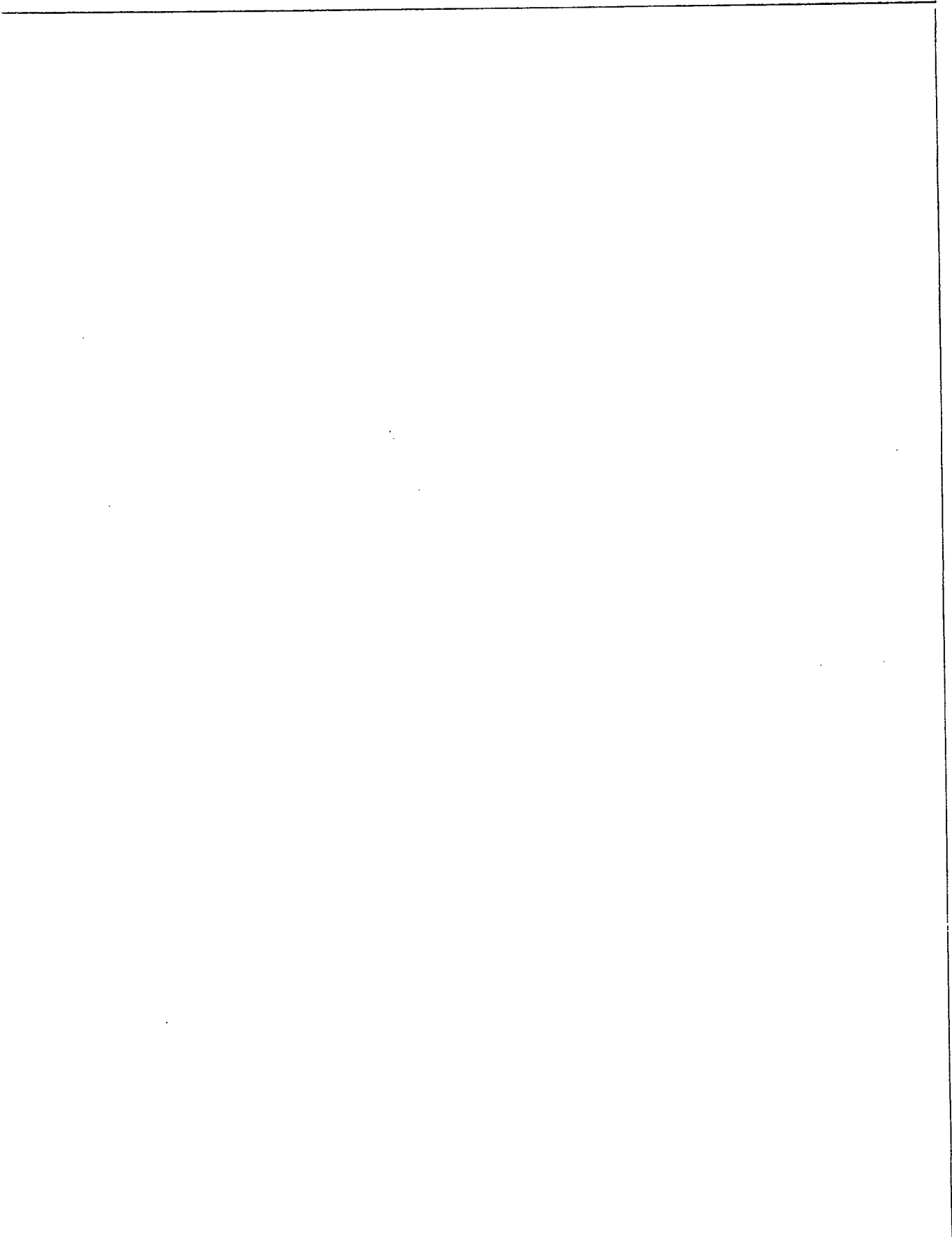


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# **EXHIBIT K**

## **Chester County Purchasing Policy and Procedure Manual**







CHESTER COUNTY  
PURCHASING  
POLICY  
AND  
PROCEDURE  
MANUAL

CCPP001

I hereby acknowledge that I have read and understand the Chester County Purchasing Policy Manual and have been advised that I may contact my Supervisor at any time for clarification of any policy or procedure included in this manual.

I further acknowledge these guidelines should not be construed as a contract or statement of conditions of employment. This organization reserves the right to make changes as deemed appropriate and these changes may be made without advance notice. It should also be understood that employment is terminable at will of either the employee or the County at any time and no representative of the County, other than the County Manager or County Council, has the authority of any contractual agreement.

**THIS MANUAL DOES NOT CREATE A CONTRACT OF EMPLOYMENT.**

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

CCPP002

|                                                                          |                |                         |
|--------------------------------------------------------------------------|----------------|-------------------------|
| Title:<br><br>Purchasing Policy and Procedure Manual – Table of Contents |                | Policy #:               |
|                                                                          |                | Submitted By: R. Ingram |
|                                                                          |                | Approved By             |
| Effective Date: 1 July 2003                                              | Supersedes No: | Page No. 1 of 1         |

### POLICIES

P-010 Overview  
 P-020 Purchasing Responsibilities  
 P-030 Teams and Integration  
 P-040 Purchasing Law  
 P-050 Anti-Trust Law  
 P-060 Contract Types  
 P-070 Contract Negotiations  
 P-080 Legal Jurisdiction  
 P-090 Ethical Practices  
 P-100 Confidentiality  
 P-110 Conflicts of Interest  
 P-120 Gifts and Gratuities  
 P-130 Contact with the Media  
 P-140 Purchase Order Issuance  
 P-150 Purchase Order Preparation  
 P-160 Requisition Review Policy  
 P-170 Supplier Selection  
 P-180 Supplier Relations  
 P-190 Supplier Obligations  
 P-200 Supplier Visitation  
 P-210 Information and Data Interchange

### PROCEDURES

PP-010 Overview  
 PP-020 Purchase Order Approval  
 PP-030 Requisition Approval  
 PP-040 Bid Management  
 PP-050 Informal Bids  
 PP-060 Invitation to Bid  
 PP-070 Bid Opening Procedures  
 PP-080 Preparing Requisitions  
 PP-090 Purchase Orders  
 PP-100 Blanket Orders  
 PP-110 Credit Cards  
 PP-120 Delegation of Commitment Authority  
 PP-130 Encumbrances  
 PP-140 Request For Proposal (Format)  
 PP-150 Invitation for Bid (Format)  
 PP-160 Filing of RFP's and IFB's  
 PP-170 Contract Administration

CCPP003

|                                                   |                                        |                                |
|---------------------------------------------------|----------------------------------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual - Overview |                                        | Policy #: P-010 Rev 1          |
|                                                   |                                        | Submitted By: Robert J. Ingram |
|                                                   |                                        | Approved By: Gene Klugh        |
| Effective Date: 1 Nov 2004                        | Supersedes No: P-010 dated 1 July 2003 | Page No. 1 of 4                |

## I. PURPOSE

To establish clear policies for all activities associated with the purchasing function within the Chester County Government. This manual will be evolving as situations and laws change.

## II. GENERAL

Public Purchasing embraces a fundamental obligation to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative branch. The intent of the Chester County Council is set forth in the Article V of the Code of Ordinances. The ordinance applies to contracts for the procurement of supplies, services and construction, entered into by the County of Chester. It shall apply to every expenditure of public funds by the County for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory Federal law and regulations, which are not reflected in these procedures. Nothing in these procedures shall prevent the County from complying with the terms or conditions of any grant, gift or bequest which are otherwise consistent with law.

Competitive procurement requires time and administrative effort; it does not guarantee that a department or agency's preferred brand or vendor will be selected. Conducted properly, competitive procurement responds to user needs, results in public confidence in the integrity of public purchasing, and generally brings the most favorable prices.

The County of Chester Code of Ordinances, Article V, directs the County Manager to issue regulations to amplify the provision of this article.

The County of Chester has adopted operating procedures consistent with the County Council in managing the commitments of funds entrusted to the county.

The acquisition of supplies, equipment and services necessary for the every day operation of the County is the responsibility of the Office of Purchasing operating under the direct supervision of the Director of Contracts and Procurement.

It is the responsibility of all who have been delegated the authority to commit funds through the purchasing function to adhere to the policies contained in this manual. This Policy Manual is effective this date.

The Purchasing Office is the only unit in the County authorized to procure supplies, materials, equipment and contractual services required by the departments except as provided by Council Ordinance and in the policy on petty cash. Purchases made contrary to provisions of this article shall be considered and unauthorized and unlawful purchase. The head of the department making such purchase transaction shall be personally liable for the amount of such purchase or contract unless waived by the County Manager.

CCPP004

|                                                   |                           |                                |
|---------------------------------------------------|---------------------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual - Overview |                           | Policy #: P010 Rev 1           |
|                                                   |                           | Submitted By: Robert J. Ingram |
|                                                   |                           | Approved By: Gene Klugh        |
| Effective Date: 1 Nov 2004                        | Supersedes No: 1 Jul 2003 | Page No. 2 of 4                |

### III. INTRODUCTION

This manual has been prepared to provide information and consistent policy direction to those departments and operations within the Chester County Government engaged in purchasing activities on behalf of the Chester County Government. Its primary purpose is to provide guidance and communicate policies to individuals assigned to the purchasing department and others throughout the organization with delegated purchasing authority. This manual supercedes all previously developed purchasing policies regardless of where they may reside within the organization. The intent of this policy manual is to foster competition among suppliers, enhance the value received from county expenditures and create standards for behavior in conducting purchasing activities. Departments and facilities authorized to perform purchasing activities are permitted to maintain stricter policies provided they conform to the letter and spirit of this manual and do not, in any way, restrict competition or impede in the creation of adding value relative to purchasing activities.

The manual will be revised and supplemented, as necessary, to meet changing needs and conditions. Revised pages will be mailed to those designated for keeping the manual current. It will be important for the updating process to be maintained in order that employees have the latest policy guidelines available at all times.

### IV. DUTIES AND AUTHORIZATION

The Director of Contracts and Procurement is the County of Chester's agent for the purpose of entering into contracts for the procurements of goods and services. The County Manager, Director of Contracts and Procurement or his designee are the only individuals authorized to sign purchase orders or contracts on behalf of the county. It is the responsibility of The Purchasing Office to assure the Administration and members of the County Council that purchases are made in compliance with County Ordinance and other policies governing these actions. Anyone other than the County Manager, Director of Contracts and Procurement who sign contracts which commit the County of Chester may be assuming personal liability for the commitment.

### V. DEFINITIONS

Purchasing: Identification and recognition of the needs for goods and services throughout the organization, and the assurance that those needs are satisfied at the lowest possible cost consistent with the desired quality and business objective(s). The Chester County Government Purchasing Department, hereafter referred to as Purchasing, serves as an important cross functional ally supporting operating groups within the county as they strive to meet needs and achieve mandates since the department represents the primary contact between the various functions and their suppliers.

CCPP005

|                                                   |                            |                                |
|---------------------------------------------------|----------------------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual - Overview |                            | Policy #: P010 Rev 1           |
|                                                   |                            | Submitted By: Robert J. Ingram |
|                                                   |                            | Approved By: Crandall O. Jones |
| Effective Date: 1 Nov 2004                        | Supersedes No: 1 July 2003 | Page No. 3 of 4                |

Purchasing Activities: Any activity associated with current and potential suppliers.

Policies: Policies contained herein represent decisions made by management for the purpose of providing consistent direction, expectations of behavior and creating controls. These policies establish basic philosophies and the basis under which the Chester County Government Purchasing Department and purchasing activities throughout the organization will operate.

Procedures: Procedures are the prescribed means of accomplishing policy. Their intent is to provide personnel with guidelines and, where appropriate, specific action plans to ensure uniformity, compliance and control of all policy related activities.

Purchasing Agent or Buyer: As used in this document, is an employee of the Director of Contracts and Procurement.

#### V. OBJECTIVE

The overall goal is to maintain, at all times and regardless of conditions, a continuous supply of goods and services in support of Chester County Government's business plan and that of its facilities. Purchasing seeks to identify and acquire supplies at the lowest cost consistent with the desired quality, and being environmentally friendly for both the short – and – long term interests of the county. Purchasing seeks to leverage its buying power where possible and maintain responsible and ethical relationships with suppliers. Some of these responsibilities include:

1. Ensure the timely flow of acceptable goods and services.
2. Develop reliable alternate sources of supply and promote competition among suppliers.
3. Promote competition among sources of supply fostering better prices, service and terms.
4. Treat all prices and proprietary information submitted by suppliers as confidential.
5. Comply with all applicable laws, including antitrust laws, without exception.
6. Conduct purchasing activities with the goal of maximizing the value per dollar spent.
7. Resolve all complaints relative to purchased goods and services.
8. Provide leadership, input and coordination throughout the organization relative to standardization.
9. Provide support to achieving the counties cash flow objectives.

#### VI. EMPLOYEE ACCEPTANCE

It is the responsibility of the Director of Contracts and Procurement and the respective departmental management where activity occurs to ensure that personnel involved in purchasing activities:

1. Read and understands all relevant policy and procedures when first employed.

CCPP006

|                                     |                            |                                |
|-------------------------------------|----------------------------|--------------------------------|
| Title:                              |                            | Policy #: P-010                |
| Purchasing Policy Manual - Overview |                            | Submitted By: Robert J. Ingram |
|                                     |                            | Approved By: Gene Klugh        |
| Effective Date: 1 Nov 2004          | Supersedes No: 1 July 2003 | Page No. 4 of 4                |

2. Annually review and discuss all relevant policy and procedures to insure their understanding is current and clear.
3. Sign a statement at employment and annually indicating they have read and understand the policy.

## VII. DISTRIBUTION

*Position*  
County Manager  
Council Members  
Sheriff  
Directors  
Managers  
Purchasing Agents  
Buyers  
Accounts Payable  
Finance  
Treasurer

CCPP007



|                                                        |                |                                |
|--------------------------------------------------------|----------------|--------------------------------|
| Title:                                                 |                | Policy #: P-020                |
| Purchasing Policy Manual – Purchasing Responsibilities |                | Submitted By: Robert J. Ingram |
|                                                        |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                            | Supersedes No: | Page No. 1 of 2                |

## I. PURPOSE

In order for the Chester County Government to maintain its position and achieve its goals, we must continually strive to balance cost, delivery and quality in every area of the business. An excellent opportunity for cost reduction and expense control exists since purchased materials and services represent a good portion of the county's operating expenses.

It is mandatory in purchasing the bulk of our supplies and services for buying to be assigned to a group of people skilled in negotiating, value analysis, and other purchasing techniques. Their primary responsibility is to manage commercial relationships with vendors for supplies, materials and services with the objective that they be available at the time, place, quantity, quality and price consistent with the needs of the county.

To achieve this objective, the responsibilities, all employees must adhere to authorities and controls set forth in this policy.

## II. RESPONSIBILITIES

1. The Director of Contracts and Procurement has the responsibility for the procurement of goods and services either through the activities of his/her direct reports or those delegated elsewhere within the county to perform such services. The Director of Contracts and Procurement will submit to the County Council any and purchases, contracts or agreements of \$10,000.00 or more for their approval. The Director of Contracts and Procurement can fully delegate all purchasing authority to a group undertaking highly specific or specialized purchase activity or set of activities.
2. Purchasing has the responsibility for obligating the county government and for making the final determination of sources of supply, quantity, quality, delivery and price and contract negotiations, except where others are so authorized by the Director of Contracts and Procurement. Such decisions are made in conjunction with the appropriate functional area(s) within the Chester County Government.
3. Purchasing is responsible for initiating and maintaining effective and professional relationships with suppliers, existing and potential.
4. Purchasing is to serve as the primary channel through which all relevant requests are handled. Purchasing will handle all pricing correspondence, while the respective user department may correspond directly with suppliers regarding technical issues. With this in mind, close, ongoing communication and coordination must occur between Purchasing and the user department.
5. All negotiations are to be handled by the appropriate personnel within their delegated authority.
6. Supplier sales representatives are to be directed to the appropriate member of the Purchasing Department.
7. All employees engaged in purchasing activities will recognize and practice good public relations through courteous treatment of all callers and suppliers.

CCPP008

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                |                                |
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| Title:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                | Policy #: P-020 (Rev 1)        |
| Purchasing Policy Manual – Purchasing Responsibilities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                | Submitted By: Robert J. Ingram |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Supersedes No: | Page No 2 of 2                 |
| <ol style="list-style-type: none"> <li>8. Purchasing personnel and those individuals with delegated authority will obtain and purchase all goods at the lowest possible cost, considering the guidelines of price, service, quality and delivery.</li> <li>9. All employees involved in purchasing activities will insure that confidentiality is protected regarding proprietary information within Chester County and its relationship with suppliers.</li> <li>10. The Director of Contracts and Procurement is to assume full authority to question all purchasing activities in order that the best interests of the county are served.</li> <li>11. Purchasing personnel are to advise ordering departments whenever the quality or specifications of ordered materials are inconsistent with normal standards that may lead to higher costs given market conditions.</li> <li>12. Purchasing personnel will work to establish and encourage punctual delivery of specific goods and services per the terms of negotiated agreements.</li> <li>13. Purchasing personnel will negotiate the return of rejected equipment or supplies to suppliers.</li> <li>14. The Director of Contracts and Procurement is to advise the County Manager of economic and market conditions which may significantly impact Chester County's short- and long – term interests.</li> <li>15. Negotiate contracts for personal services and submit them for approval and award.</li> <li>16. Develop, with the approval of the county attorney as to legal sufficiency, standard forms and conditions of invitations to bid and purchase orders and contracts; develop and prescribe the use by agencies of other forms required in carrying out the provisions of this article; and amend or eliminate any such forms.</li> <li>17. To develop and use those types of contracts and purchase orders which will reduce to the minimum the accompanying paper work and which will, in other requests, will be most advantageous to the county.</li> <li>18. To the greatest extent possible, to make full utilization of the purchasing services provided through the South Carolina Division of General Services, Materials Management Office, i.e., S. C. State Contracts.</li> <li>19. Act as Chester County's representative on all matters pertaining to purchasing.</li> <li>20. Consolidate purchases of like or common items to obtain the maximum economical benefits and cost savings, and explore the possibilities of buying "in bulk" to take full advantage of quantity discounts <u>and energy efficient products.</u></li> <li>21. Disqualification of Bidders: Have the responsibility to ascertain the identity of all vendors who default on their quotations to the County and to make no purchases from said vendor for a period of up to one year unless default assessment has been satisfied or unless waived by the County Manager.</li> <li>22. Prepare and submit the annual budget for Procurement Services.</li> <li>23. Prescribe and maintain a standard purchasing manual for all using agencies.</li> <li>24. Transfer between departments/agencies supplies, materials and equipment which are no longer needed by a holding agency but which can be used by the receiving agency. Exchange, trade in or sell those supplies, materials and equipment which are surplus, obsolete or unused and which are found by the county manager not to be required for public use.</li> </ol> |                |                                |

CCPP009

|                                                                |                |                                |
|----------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Teams and Integration |                | Policy #: P030                 |
|                                                                |                | Submitted By: Robert J. Ingram |
|                                                                |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                    | Supersedes No: | Page No. 1 of 1                |

#### I. PURPOSE

To provide policy and strategy direction for the formation and use of teams and the fostering of cross-functional communications, the aim of which is to add value in purchasing and other activities.

#### II. SCOPE

This policy applies to all products or services that are consumed by the Chester County Government where measurable benefits can be realized through the creation of cross-functional teams and through which better buying practices can be achieved.

#### III. GENERAL

Cross-functional teams will be formed, as appropriate, in order to pool the collective commodity expertise to plan and implement strategy for acquiring and developing new or existing products or services under the most favorable conditions and terms for the county.

CCPP010

|                                            |                |                                |
|--------------------------------------------|----------------|--------------------------------|
| Title:                                     |                | Policy #: P040                 |
| Purchasing Policy Manual – Purchasing Law  |                | Submitted By: Robert J. Ingram |
|                                            |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003<br>1 July 2003 | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

To provide familiarity with purchasing law to employees engaged in the purchasing function.

II. SCOPE

This policy applies to all employees.

III. GENERAL

Every employee should have the knowledge and understanding, as well as the legal consequences, of the commercial acts engaged in on behalf of the Chester County Government. With this knowledge, those individuals involved in purchasing activities will be better equipped to recognize the need to seek appropriate legal guidance when necessary.

Acts of Purchasing Directors, Managers, Agents and others authorized are binding upon the county, within the limits of their authority. As such, employee activities must be conducted in accordance with all legal requirements.

IV. PERSONAL LIABILITY

Purchasing Department employees and those delegated purchasing authority represent the county and are governed by the law of agency. As an agent, employees have “express authority” granted by the county and are guided by unwritten but established practices and policies.

So long as employees of the Chester County Government act within the scope of “express authority” and are neither negligent, dishonest, nor acting in bad faith, then the employees are not likely to become personally liable for such actions. Personal liability may occur, however, if the scope of business authority is exceeded.

To protect against personal liability, employees should avoid the following types of situations:

1. Making a false statement regarding authority.
2. Making any false statement with the intent to deceive.
3. Taking action without authority that could result in damages to another.
4. Performing an illegal act, even with the authorization of the employer.
5. Performing any damaging act outside employee’s scope of authority.

In each of these cases, the seller generally has no recourse to the county since no valid contract exists. The only recourse a seller commonly has is to take legal action against the employee personally. However, it is possible for the county to be held liable in cases where the “apparent” scope of the employee is beyond the actual scope.

CCPP011

|                                                        |                |                                |
|--------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Antitrust Law |                | Policy #: P050                 |
|                                                        |                | Submitted By: Robert J. Ingram |
|                                                        |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003<br>1 July 2003             | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

To insure compliance and provide guidance to employees engaged in the purchasing function concerning the antitrust laws.

II. SCOPE

This policy applies to all employees.

III. ANTITRUST

It is the Chester County's Government policy to comply with both the letter and spirit of all laws applicable to the county's business and interests.

Violations of the antitrust laws, such as the Sherman, Clayton and the Federal Trade Commission Acts, in any area of the county government's operations may have significant negative impact on its ability to conduct business, may lead to expensive litigation, damages and penalties. An employee who participates in a violation is individually and personally subject to fine or imprisonment.

Chester County Government's compliance with these laws depends on the conduct of its employees. Therefore, the policy mandates strict antitrust law compliance in all respects. There shall be no exceptions to this policy.

Employees are obligated to adherence of this policy. Should an issue arise with the unknown or potential legal implications, employees should seek the county's legal counsel for advice and handling.

IV. ROBINSON - PATMAN ACT

It is also the Chester County Government's policy to purchase goods and services on the bases of price, quality, terms and services. Persons performing a purchasing function will not indicate or imply a linkage between the purchases from suppliers and the usage or sale of county products or services.

Personnel performing a purchasing function shall not demand or negotiate a special pricing structure from a supplier who is not willing to offer to other purchasers of goods of like quality and quantity.

Legal counsel should be consulted prior to taking any action when in doubt regarding the application this policy to any activity.

CCPP012

|                                           |                |                                |
|-------------------------------------------|----------------|--------------------------------|
| Title:                                    |                | Policy #: P060                 |
| Purchasing Policy Manual – Contract Types |                | Submitted By: Robert J. Ingram |
|                                           |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July, 2003              | Supersedes No: | Page No. 1 of 3                |

I. PURPOSE

Contracts have the purpose of establishing firm commitments with vendors and suppliers, assuring supply, establishing pricing mechanisms and other terms. There are several types of contracts frequently utilized by the Chester County Government to formalize supplier agreements, each having different objectives and applications.

In all possible cases, it shall be the Chester County Government's policy to place commodities or product and services whose annual value exceeds \$100,000 under contract with duration of at least one year.

II. SCOPE

This policy shall apply to all suppliers, materials and services purchased by the organization.

III. PRINTED DOCUMENTS

Within the United States, the Uniform Commercial Code of Law (UCC) governs legal rules regarding contract formation.

In a substantial part of the Chester County Government's purchasing activities, the supplier submits the first written document in the negotiations. It is recognized that suppliers have customs and practices unique to their industry and have repetitive occasions to prepare proposals and standard contract forms. For these reasons and for the sake of efficiency, it is not mandated that agreements must be written on the Chester County Government contract paper. Nonetheless, careful scrutiny of supplier-provided agreements, forms and other documents must be conducted by designated individuals within the Purchasing and Law Departments, and other functions as deemed appropriate.

IV. GENERAL

Forms, purchase orders, contracts and other documents perform important functions for the organization. Used correctly, they assure clarity, uniformity and provide legal protection for all parties.

Written documents are usually either standard forms or individually tailored, depending on the type and nature of the transaction. In many cases suppliers will insist upon use of their forms or documents. The Chester County Government is willing to accept use of supplier documents provided proper review has been administered by all appropriate parties, including Legal, within the county prior to execution or commitment. Employees engaged in the purchasing process are responsible for becoming familiar with all standard forms, whether produced by the county or its suppliers.

CCPP013

|                                                         |                                |
|---------------------------------------------------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual - Contract Types | Policy #: P-060                |
|                                                         | Submitted By: Robert J. Ingram |
|                                                         | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                             | Supersedes No:                 |
| Page No. 2 of 3                                         |                                |

Contracting methods commonly require written documents covering some of the steps of a transaction. The most common types of documents used in the Chester County Government's purchasing process include:

1. Requisition
2. Invitation to Bid
3. Letters of Acknowledgement
4. Purchase Order
5. Blanket Order
6. Formal Contract
7. Request for Proposal

A **Requisition** is an initial document prepared by the user group identifying the desired requirement for a particular good or service.

An **Invitation to Bid** is a formal request by the County for goods or services.

A **Letter of Acknowledgement** represents a confirmation provided by the supplier as to the terms agreed upon by both parties.

A **Purchase Order** is a legal document governed by the Uniform Commercial Code of Law (UCC). The purchase order will be used by all authorized employees for purchases as defined in Procedure PP140. The Purchase Order constitutes a final and entire agreement between the supplier and the county. It may be either an offer to buy or conformation of a verbal between the county and a supplier. Usually, it is an instrument in an offer to buy, and when formal acceptance is received from the supplier it becomes a legal contract. As a legal contract, the Purchase Order gives the supplier authority to ship and to invoice thereby committing the county to the value of the goods or services purchased.

**Blanket Orders** are Purchase Orders that typically stipulate a specific volume of a given product or service for delivery during a specified period of time. This type of document is implemented through a series of releases against that Purchase Order number. Blanket Orders are normally used to contractually stipulate pricing over a fixed period or to implement a contract with a minimum of paperwork.

**Formal Contracts** are typically established for products that are used in large volumes with some degree of predictability. The primary objectives of this type contract are to assure supply, leverage the Chester County Government's buying power and minimize inventories by scheduling deliveries to coincide with needs.

**Request for Proposal** is a formal request for the vendor to supply a proposal to design, or to supply goods or services.

CCPP014

|                                           |                |                                |
|-------------------------------------------|----------------|--------------------------------|
| Title:                                    |                | Policy #: P-060                |
| Purchasing Policy Manual – Contract Types |                | Submitted By: Robert J. Ingram |
|                                           |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003               | Supersedes No: | Page No. 3 of 3                |

#### V. ORAL AGREEMENTS TO PURCHASE AND THE "STATUTES OF FRAUDS"

Purchasing personnel and their designates need to understand when written confirmation is required to create an enforceable agreement, even though legally binding contracts result from oral orders in most cases. The law covering written purchasing agreements is known as the "Statue of Frauds" and is designed to prevent commercial frauds. Some of the more important points covered in the UCC are as follows:

1. There must be some written notation beyond an orally stated purchase order number.
2. Between merchants, notice of objection must be given within a reasonable time, normally 10 days, if the agreement of the contract that is generated is not in accordance with either party's understanding.
3. An oral agreement without a written contract or other document can be enforced if the notice from the seller is not according to the Buyer's understanding.

A written agreement must meet three definite requirements.

1. Evidence of a contract for the sale of goods or services;
2. A signature in any manner that includes an authentication and identifies the party to be charged;
3. Specification of a quantity.

CCPP015



|                                                                |                |                                |
|----------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Contract Negotiations |                | Policy #: P-070                |
|                                                                |                | Submitted By: Robert J. Ingram |
|                                                                |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                    | Supersedes No: | Page No. 1 of 1                |

#### I. PURPOSE

To provide guidelines to all personnel within the Chester County Government involved in contract negotiations.

#### II. SCOPE

This policy applies to all employees.

#### III. RESPONSIBILITY

The Director of Contracts and Procurement or his designated representative has the responsibility of ensuring that all contract negotiations conducted on behalf of the Chester County Government by authorized employees of the county are consistent and with in the guidelines contained in this manual.

As part of this responsibility, the Director of Contracts and Procurement will develop appropriate checklists to serve those engaged in the negotiation process. Checklist topics may include basis for award, blanket purchase orders, contracts and agreements, negotiations, specifications and terms and conditions.

#### IV. GENERAL

A contract is a bilateral agreement entered into by the buyer and seller. For a contract to be legal and enforceable, both an offer and acceptance, in identical terms are required.

The purpose of negotiations is to bring into existence a contract that is clear, concise, complete, and in the best interest of all parties to the agreement. It is in this spirit that county employees should enter into negotiations.

Contract negotiations are conducted prior to final award and, as such, prudence and good judgment must be exercised during this process. Any questions or concerns regarding such matters should be brought to the attention of the Director of Contracts and Procurement.

CCPP016

|                                                                         |                |                                |
|-------------------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Contracts – Legal Jurisdiction |                | Policy #: P-080                |
|                                                                         |                | Submitted By: Robert J. Ingram |
|                                                                         |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                             | Supersedes No: | Page No. 1 of 1                |

#### I. PURPOSE

To ensure that legal jurisdiction is clearly established on contractual documents.

#### II. SCOPE

This policy applies to all employees.

#### III. JURISDICTION

All contractual documents concerning the purchase of materials and/or services must clearly state the legal jurisdiction and the points of delivery and acceptance of the materials and/or services by the Chester County Government.

Questions regarding Legal Jurisdiction or points of delivery and acceptance in any agreement should be directed to the Legal Counsel for the Chester County Government.

CCPP017

|                                                            |                |                                |
|------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Ethical Practices |                | Policy #: P-090                |
|                                                            |                | Submitted By: Robert J. Ingram |
|                                                            |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                | Supersedes No: | Page No. 1 of 1                |

### I. PURPOSE

To provide guidance to employees in any supplier-related activity concerning ethical practices.

### II. SCOPE

This policy applies to all employees.

### III. GENERAL

The county's suppliers, their services, and personnel are an extension of the Chester County Government resources. It is the responsibility of all employees to work to maintain the good name of Chester County Government, to develop and maintain good relations with suppliers and service providers, and to recognize the value and importance of relationships with them.

In personal contacts with suppliers and services providers, each employee represents the county and should reflect the interests of all departments. In addition to this policy, guidelines for the buyer-seller relationship are addressed in Policy P-180, Supplier Relations.

The following guidelines are the standards of purchasing practice recommended by the National Association of Purchasing Management (NAPM).

1. Avoid intent or appearance of unethical or uncompromising practice in relationships, actions and communications.
2. Demonstrate loyalty to the employer by diligently following the lawful instructions of the county, using reasonable care and only granted authority.
3. Refrain from any private business or professional activity that would create a conflict between personal interest and the interests of the county government.
4. Refrain from soliciting or accepting money, loans, gifts (other than advertising novelties), entertainment, favors or services from present or potential suppliers that might influence, purchasing decisions.
5. Handle information of a confidential or proprietary nature with care and consideration of ethical standards and legal ramifications.
6. Promote positive supplier relationships through professional and impartial conduct.
7. Refrain from reciprocal agreements that restrain competition.
8. Know and obey the letter and spirit of laws governing purchasing activities.
9. Encourage competition among all potential suppliers, including minority-owned, small or disadvantaged businesses.
10. Enhance the stature and capabilities of the purchasing function by acquiring and maintaining current technical knowledge and the highest standard of ethical behavior.

CCPP018

|                                                          |                |                                |
|----------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Confidentiality |                | Policy #: P-100                |
|                                                          |                | Submitted By: Robert J. Ingram |
|                                                          |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                              | Supersedes No: | Page No. 1 of 1                |

#### I. PURPOSE

To identify the confidentiality nature of purchasing related activities.

#### II. SCOPE

This policy applies to all employees.

#### III. GENERAL

It is recognized that some of the transactions relating to the purchasing function may contain proprietary information, especially with regard to our suppliers.

It is considered unethical and illegal, as well as damaging to the county's position to allow county government propriety information about one supplier to pass to another supplier. This possibility is discussed in this manual under Policy P-180, Supplier Relations, where passage of such information is prohibited. Every effort should be made to avoid any actual or perceived breach of the confidential relationship with suppliers.

All files in Purchasing are to be maintained in an up-to-date manner. Access to these files and any other document deemed as proprietary will be maintained within the department and shall be restricted to those authorized by the Director of Contracts and Procurement. Other departments should manage purchasing-related files in similar fashion.

CCPP019

|                                                                |                |                                |
|----------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Conflicts of Interest |                | Policy #: P110                 |
|                                                                |                | Submitted By: R. Ingram        |
|                                                                |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                    | Supersedes No: | Page No. 1 of 1                |

### I. PURPOSE

To provide guidance to employees engaged in any aspect of the purchasing function concerning the avoidance of conflict of interest.

### II. SCOPE

This policy applies to all employees engaged in any part of the purchasing process.

### III. GENERAL

Employees engaged in the purchasing function are expected to be free of interests or relationships that are actually or potentially detrimental to the best interest of the Chester County Government, and shall not engage or participate in any commercial transactions involving the county.

Any employee engaged in purchasing who has assumed, or is about to assume, a financial or other outside business relationships that might involve a conflict of interest must immediately inform management of the circumstances involved. This information is to be reviewed at an appropriate level for decision on whether a conflict exists and, if so, what course of action is needed. A conflict of interest exists when an employee:

1. has an outside interest that materially impacts the time or attention that should be devoted to the affairs of the county.
2. has a direct or indirect interest in relationship with an outsider that is inherently unethical or might be implied or construed to be, or make possible personal gain due to the employee's ability to influence decisions; render the employee partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the employee's judgment; place the employee or the county in an embarrassing or ethically questionable position; or negatively reflect on the integrity of the county;
3. takes personal advantage of an opportunity that properly belongs to the county;
4. uses county property without approval;
5. discloses county proprietary information to unauthorized persons.

CCPP020

|                                                               |                |                                |
|---------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Gifts and Gratuities |                | Policy #: P-120                |
|                                                               |                | Submitted By: Robert J. Ingram |
|                                                               |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                   | Supersedes No: | Page No. 1 of 1                |

#### I. PURPOSE

To provide guidance to employees engaged in any supplier-related activity concerning receiving gifts and/or gratuities.

#### II. SCOPE

This policy applies to all employees.

#### III. GENERAL

It is the responsibility of the Director of Contracts and Procurement or the appropriate department/facility manager to ensure that personnel involved in purchasing activities understand the following:

1. No employee of the Chester County Government shall personally accept loans; moneys or other special considerations from an individual or business organization doing business with the county.
2. Gifts, other than advertising novelties, and entertainment of any value may not be accepted. Lunches, dinners and entertainment would be included in this instance and are not acceptable.
3. The responsibility for adherence to this policy rests with both the Chester County Government employees and its suppliers. Employees must be beyond challenge in every business transaction and must not allow themselves to be put in a position where their judgment can be influenced.
4. Any employee offered or receiving payments, gifts or other consideration shall refuse it to the giver in a tactful manner, referring the giver to the policy prohibition.
5. A letter outlining this policy will be issued annually by the Director of Contracts and Procurement and distributed to all suppliers, Purchasing Department employees and department/facility managers who will, in turn, distribute to employees engaged in purchasing activities.
6. Any employee not complying with this policy shall be subject to appropriate disciplinary action.
7. Management and Supervision must insure compliance to this policy by their subordinates.

CCPP021

|                                                                 |                |                                |
|-----------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Contact with the Media |                | Policy #: P-130                |
|                                                                 |                | Submitted By: R. Ingram        |
|                                                                 |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                     | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

To establish a policy concerning contact with the media.

II. SCOPE

This policy applies to all employees

III. GENERAL

Under no circumstances will any employee make or release unauthorized statements to the media.

It is inappropriate and unprofessional for anyone other than Council Members, other elected officials, and the County Manager to comment on the County's operational or policy issues.

All media related items (statements, press releases, articles, etc) will be submitted to the Director of Contracts and Procurement first for his approval and then to the County Manager for approval prior to submission.

The format to be used for all articles, releases shall be as follows:

**FOR IMMEDIATE RELEASE:**

Chester County Purchasing Department Nationally Recognized

For Further Information Contact:  
Director of Contracts and Procurement  
803-581-6268

Release

CCPP022

|                                                                  |                |                                |
|------------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Purchase Order Issuance |                | Policy #: P-140                |
|                                                                  |                | Submitted By: Robert J. Ingram |
|                                                                  |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                      | Supersedes No: | Page No. 1 of 1                |

#### I. PURPOSE

To provide general contract information to all personnel working with purchase orders.

#### II. SCOPE

This policy applies to all employees.

#### III. ISSUANCE OF PURCHASE ORDERS

When we issue a purchase order without specific negotiations on the particular transaction, the printed language on the purchase order is intended to prevent our being bound by a subsequent "order acknowledgement" issued by the supplier that changes the normal and unusual condition that would attach to our offer.

When our purchase order is issued in response to a specific quotation, or request for proposal, the printed language on the purchase order from is intended to give our purchase order the legal effect of a counteroffer, requiring the supplier to accept our terms (which usually are the ordinary conditions required by law and industry standard).

The purchase order should prevent the Chester County Government from being bound by any unclear and/or unusual provisions in a supplier's quotation. Terms and conditions contained in the county's purchase order provide protection against unfair or unreasonable limitations or disclaimers that frequently appear in quotations forms from suppliers. The Chester County Government purchase orders will be issued in accordance with PP-090 since these terms and conditions become critical when serious claims arise upon discovery of defects in the goods or services provided.

Purchase Orders do not have to be issued for Utilities or Telephone Services.

CCPP023



|                                                                     |                |                                |
|---------------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Purchase Order Preparation |                | Policy #: P150                 |
|                                                                     |                | Submitted By: Robert J. Ingram |
|                                                                     |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                         | Supersedes No: | Page No. 1 of 2                |

#### I. PURPOSE

To provide familiarization of the required information in the formation of all purchase orders within the Chester County Government.

#### II. SCOPE

This policy applies to all employees.

#### III. GENERAL

When a purchase order is issued as an acceptance of a supplier's offer, a contractual relationship immediately exists; otherwise our purchase order constitutes an offer to create a contractual relationship, which can be completed either by the supplier's acknowledgement, acceptance or performance.

#### IV. PREPARATION OF PURCHASE ORDERS

As a major requirement, the purchase order must contain a precise and clear description of the elements of the order, the terms of the purchase, and time, manner and place of delivery. All the following information is necessary when preparing a purchase order:

- Name and address of supplier and requisitioner
- Requisition number or budget number, where applicable
- Address of ordering location and ship to/bill to address
- Account number and charge number, where applicable
- Date of order
- FOB information and discount terms
- Manner of shipment and route, where applicable
- Description of goods, quantity per item, price per unit and part number, where applicable
- Date goods are required
- Confirmation, where applicable
- Signature of the person authorized to approve the order

CCPP024

|                                                       |  |                                |
|-------------------------------------------------------|--|--------------------------------|
| Title:                                                |  | Policy #: P150                 |
| Purchasing Policy Manual – Purchase Order Preparation |  | Submitted By: Robert J. Ingram |
|                                                       |  | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                           |  | Page No. 2 of 2                |

In preparing a purchase order, the following points require special attention:

1. Price – A purchase order must state the price, number of units, part number(s) where applicable and the extended price, i.e. unit price multiplied by the number of units ordered.
2. Terms – The purchase order should show the appropriate discounts and the payment terms.
3. F.O.B. – The FOB point and freight terms should be clearly stated.
4. Delivery Requirements – The document should show the specific date, if possible, materials or services are to be delivered or performed.
5. Signatures – An authorized employee must sign all purchase orders personally. Rubber-stamping or duplicated signatures is not acceptable.

CCPP025

|                                               |                |                                |
|-----------------------------------------------|----------------|--------------------------------|
| Title:                                        |                | Policy #: P-160                |
| Purchasing Manual – Requisition Review Policy |                | Submitted By: Robert J. Ingram |
|                                               |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                   | Supersedes No: | Page No. 1 of 1                |

### I. PURPOSE

To establish the authority to review requests and determine sources.

### II. SCOPE

This policy applies to all purchasing activities.

### III. GENERAL

Purchasing is responsible for ensuring the efficient purchase of materials, supplies, and services with the objective that they be available at the proper time, quantity, quality, location and price consistent with the needs of the county. It is vital to the successful performance of this duty that the Director of Contracts and Procurement and his/her Purchasing agents have the authority to review purchase requests, specifications, and suggested sources.

It shall be the policy of the Chester County Government that Purchasing have the responsibility and authority to review specifications and sources within the following guidelines:

A. The user group, Purchasing and /or its delegates shall jointly develop a list of acceptable suppliers of a specific product or service whenever necessary with the user group responsible for the technical aspects of the evaluation and the purchasing function responsible for the financial and service aspects. Once a list of acceptable suppliers has been established, Purchasing and/or its delegates shall be solely responsible for selection of a supplier from that list that best can meet the requirements of each particular order.

B. It shall be the responsibility of Purchasing and/or its delegates to review the specifications of each purchase requisition. This review shall include, but not be limited to:

1. requests for goods of a quality that seem to be greater than required;
2. requests for goods of a quality that seem to be less than required;
3. requests whose material seems to be inconsistent with the requirement;
4. requests that do not conform to county standards;
5. requests for "sole source" purchases;
6. requests without proper authorization.

C. Purchasing nor its delegates shall materially alter specifications without prior discussion with the user group.

CCPP026

|                                                |                |                                |
|------------------------------------------------|----------------|--------------------------------|
| Title:                                         |                | Policy #: P-170                |
| Purchasing Policy Manual -- Supplier Selection |                | Submitted By: Robert J. Ingram |
|                                                |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                    | Supersedes No: | Page No. 1 of 1                |

### I. PURPOSE

To define the responsibility for and provide basic guidelines for supplier selection within Chester County Government.

### II. SCOPE

This policy applies to all purchasing activities.

### III. GENERAL

The selection of suppliers is the responsibility of Purchasing and its delegates and requires a consideration of several factors. In making the selection, Purchasing or its delegates will coordinate closely with other departments to obtain adequate and reasonable specifications and other requirements relative to the purchase and supplier decision. As much detail as possible should be obtained in order that purchases adequately meet the needs of the county government at the lowest cost or best value.

Individuals making purchasing decisions should strive to select suppliers based on *expertise, dependability, reputation, past performance and financial strength*. Additional important considerations include the *nature of guaranty or warranty of the product or service, its price, and quality*.

Special consideration should be given to the following types of suppliers, provided they satisfy the just-mentioned attributes and requirements:

1. Suppliers who are developing new and improved products or equipment, or are developing/designing a special product or service for the county governments exclusive use;
2. Suppliers who are located near the county governments operation(s);
3. Participation by minority, disabled or women-owned businesses, where appropriate.

**NOTE:** The Director of Contracts and Procurement has the right and may cancel a contract in any of the following situations:

1. The vendor fails to make delivery within the time specified in the contract.
2. The vendor fails to provide service when service is part of the contract.
3. Any commodities or equipment delivered under the contract that are rejected and are not promptly replaced by the vendor. If there are repeated rejections, the contract may be cancelled even though the vendor offers to replace the items promptly.
4. The vendor agrees to the cancellation.
5. The contract is obtained by fraud, collusion, conspiracy, or by any method, which is in conflict with statutory or constitutional provisions of the State of South Carolina.

CCPP027

|                                                |                |                                |
|------------------------------------------------|----------------|--------------------------------|
| Title:                                         |                | Policy #: P-180                |
| Purchasing Policy Manual -- Supplier Relations |                | Submitted By: Robert J. Ingram |
|                                                |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                    | Supersedes No: | Page No. 1 of 1                |

### I. PURPOSE

To state the basic policy concerning supplier relations within the Chester County Government.

### II. SCOPE

This policy applies to all purchasing activities.

### III. GENERAL

It is the Chester County Government's policy to maintain and practice the highest possible standards of business ethics, professionalism, and competence in our dealings. Applicable laws must always be observed. In this regard, the following should be practiced when dealing with suppliers:

1. When necessary, in order to interview salesmen regarding details of their product, other divisions and departments should request such visits through purchasing. In interviews with salesmen, no one shall commit to preference for any product or service or give any information regarding performance or price.
2. All correspondence with suppliers will be made through purchasing except in special cases where technical details involved make it advisable to delegate authority to others. In such cases, purchasing must receive copies of correspondence.
3. Any quotations or specific information received from vendors relative to any item under consideration for purchase must not be divulged, except when state regulations or County laws make such disclosures permissible, until after a purchase has been issued.
4. Afford fair and equal treatment to all suppliers and their representatives.
5. Provide equal opportunity for all suppliers to make proposals and quote prices.
6. Guarantee confidentiality of informal quotes, proposals, agreement terms and proprietary information provided by competing suppliers.
7. Avoid creating unnecessary expense to the county government or supplier regarding returned goods.
8. Clearly explain to suppliers the reason for rejection of their bids/proposals.
9. Remain free from personal obligations to any supplier.
10. Keep informed about developing or changing sources of supplies/services, materials, and terms.
11. Keep suppliers informed about the county's needs.
12. If, for any reason, supplier is given the opportunity to requote, the competition will be afforded the same opportunity. Requoting is to be severely restricted.

CCPP028

|                                                               |                |                                |
|---------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Supplier Obligations |                | Policy #: P-190                |
|                                                               |                | Submitted By: Robert J. Ingram |
|                                                               |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                   | Supersedes No: | Page No.1 of 1                 |

#### I. PURPOSE

To define suppliers' obligation to the Chester County Government.

#### II. SCOPE

This policy applies to all supplier obligations regarding purchasing activities conducted on behalf of the county government.

#### III. GENERAL

Suppliers are expected to fulfill these basic responsibilities:

1. To negotiate purchasing contracts and agreements with Purchasing and/or its delegates.
2. To handle all written and personal communications about purchasing with the county government through Purchasing unless otherwise directed by Purchasing for technical reasons or for remote order placing; in which case Purchasing is to receive copies of all correspondence and be kept informed of any oral communications.
3. To conduct negotiations ethically, without attempts to influence through offering valuable personal gifts or entertainment.
4. To make available through Purchasing or as otherwise designated all available technical, engineering, systems, policies, and services that might improve the Chester County Government's current or future use of supplier products and/or services.
5. To advise Purchasing or other authorized personnel of any new products or services as soon as such information is available
6. To suggest ways and means of conducting joint efforts that might be of benefit to both supplier and the county government.
7. To inform Purchasing and/or its delegates of changes in economic, market or other conditions that might affect purchasing or other business decisions.

CCPP029

|                                                              |                |                                |
|--------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Policy Manual – Supplier Visitation |                | Policy #: P-200                |
|                                                              |                | Submitted By: Robert J. Ingram |
|                                                              |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                  | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

To establish policy governing supplier visitations.

II. SCOPE

This policy applies to supplier visits at any county government facility.

III. GENERAL

Suppliers shall be received in a friendly and professional manner. Suppliers shall be welcomed during regular business hours. Every effort should be made to accommodate out-of-town suppliers within reason depending on employee workloads and schedules.

All suppliers shall check in with the Purchasing Department prior to visiting any department or facility within the Chester County Government.

CCPP030

|                                                             |                |                                |
|-------------------------------------------------------------|----------------|--------------------------------|
| Title:                                                      |                | Policy #: P-210                |
| Purchasing Policy Manual – Information and Data Interchange |                | Submitted By: Robert J. Ingram |
|                                                             |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                 | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

To provide guidance for the use and implementation of Electronic Data Interchange (EDI) and data exchange within the Chester County Government.

II. SCOPE

This policy applies to all applications of electronic data interchange (EDI) between the county government and its primary suppliers, and between Purchasing and the county government's user groups.

III. GENERAL

Whenever practical, direct data links should be established between:

1. The county government and its primary suppliers;
2. Internally between Purchasing and the various departments served by this function.

EDI reduces lead times, creates efficiency, improves communication, reduces errors in order transmittal, and eliminates paperwork, administrative and overall costs.

Internally, the exchange of data improves Purchasing's ability to understand user group needs, enhance performance, better manage inventory and reduce costs.

At all times, however, care must be taken to protect the confidentiality of county government information. Before implementing any EDI plans, Chester County Government's Information Technology Department must be consulted to assure that appropriate controls are in place, plans conform to existing county government standards and are compatible with existing systems hardware and software.

CCPP031



|                                        |                |                                |
|----------------------------------------|----------------|--------------------------------|
| Title:                                 |                | Procedure #: PP-010            |
| Purchasing Procedure Manual - Overview |                | Submitted By: Robert J. Ingram |
|                                        |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003            | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

To establish uniform procedures for the procurement of materials, supplies and services that are consistent with the policies within the Chester County Government.

II. SCOPE

These procedures apply to all material, supplies and service procurement and related activities.

III. RESPONSIBILITIES

It is the responsibility of each Chester County Government employee involved in the procurement process to understand the policies upon which these procedures are based and the meaning and intent of the procedures.

If there are any questions or concerns relative to the policies or procedures, or the ability of the employee to function effectively under the requirement of these procedures, it is the responsibility of the employee to bring such matters to the attention of his/her supervisor and or the Chester County's Director of Contracts and Procurement immediately.

The fundamental purpose of these procedures is not to restrict the effectiveness of individuals involved in procurement but to provide a foundation for effective, consistent and complete consideration of all aspects of the task, the expected result of which is a positive, professional relationship between the Chester County Government and the suppliers who serve the county.

Employee Acceptance – Personnel who will be involved in the purchasing process will sign a statement upon employment and annually acknowledging the reading and understanding of this policy. The original will be maintained in the employee's local personnel file and a copy will be forwarded to the Chester County Purchasing Office.

CCPP032

|                                                                     |                                         |                                |
|---------------------------------------------------------------------|-----------------------------------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Purchase Order Approval |                                         | Procedure #: PP-020 Rev 1      |
|                                                                     |                                         | Submitted By: Robert J. Ingram |
|                                                                     |                                         | Approved By: Gene Klugh        |
| Effective Date: 1 Nov 2004                                          | Supersedes No: PP-020, dated 1 Jul 2003 | Page No. 1 of 2                |

#### I. PURPOSE

To define approval requirements for all purchasing commitments obligating Chester County Government.

#### II. SCOPE

This procedure applies to all procurement transactions.

#### III. PROCEDURE

A system of authorization and approval is an important element of internal control. PP-030, Requisition Approval Levels, defines the requirements for department heads or other designees to approve purchase requisitions prior to submission to the Chester County Purchasing Department. This procedure applies to the approval to purchase after receiving a valid requisition. Unless the Purchasing Agent or authorized individual has approval authority, he/she is required to obtain appropriate approval of each purchase transaction prior to the establishment of a firm order or contract.

#### IV. PROCEDURE

The following table provides levels of required approval based on the dollar amount of the order for purchasing activity not fully delegated to an operating group or department. All designated purchasing personnel shall obtain the required approval prior to final commitment, or condition the order or contract to reflect the needed approval.

| Value of Order<br>Or Contract | Facility<br>Dept Mgr | Director of<br>Procurement | County<br>Manager | County<br>Council |
|-------------------------------|----------------------|----------------------------|-------------------|-------------------|
| Less than<br>\$10,000.00      | X                    | X                          |                   |                   |
| More than<br>\$10,000.00      | X                    | X                          | X                 | X                 |

In situations where one or more of the persons whose approval is required but are not available, the approval of the next highest authority will be obtained. The facility/department manager may delegate in writing specific purchasing authority to subordinates.

CCPP033

|                                                       |                                       |                                |
|-------------------------------------------------------|---------------------------------------|--------------------------------|
| Title:                                                |                                       | Procedure #: PP-020            |
| Purchasing Procedure Manual – Purchase Order Approval |                                       | Submitted By: Robert J. Ingram |
|                                                       |                                       | Approved By: Gene Klugh        |
| Effective Date: 1 Nov 2004                            | Supersedes No:PP-020 Dated 1 Jul 2003 | Page No. 2 of 2                |

Lease or rental agreements and all agreements for real property follow the same limitations.

If a purchase order change is issued to correct or supplement an order or contract and it is apparent additional expenditures will occur and will exceed the previously approved amount by 10% or more, then the change order will be Approved By: County Manager the appropriate approval level identified in the table based on the value of the original order or contract amount plus the value of the change order.

CCPP034

|                                                                         |                |                                |
|-------------------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Requisition Approval Levels |                | Procedure #: PP-030            |
|                                                                         |                | Submitted By: Robert J. Ingram |
|                                                                         |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                             | Supersedes No: | Page No. 1 of 2                |

I. PURPOSE

To define authority for the approval of purchase requisitions.

II. SCOPE

This procedure applies to all purchase requisitions.

III. APPROVALS

The appropriate individual prior to issuance of any purchase order must approve purchase requisitions. The designated Buyer or Purchasing Agent is responsible for ensuring that the proper appropriate approval is obtained, either in writing or verbally, before issuance of any purchase order.

The following guidelines are provided to assist the Buyer or Purchasing Agent in ensuring the requisitions are properly approved prior to purchase.

A. When a charge to account number is cited, refer to the list of personnel who are authorized to approve purchase requisitions issued by Accounting.

B. Purchase Requisitions

Department Heads are required to sign all requisitions.

The Department Head must approve emergency purchases requiring air or premium shipment, or supplier or overtime charges.

C. Capital Authorization fro Expenditure

The Buyer or Purchasing Agent is responsible for verifying that a Capital Expenditure has been approved. The Purchasing Department will maintain a copy of all approved Capital Expenditures.

When an approved /budgeted Capital Expenditure Item is cited as the authority for a requisition, the requisition is to be Approved By: Crandall O. Jones the appropriate facility/department head. The requisitioner is responsible for obtaining the purchase order.

D. Equipment Rental

The appropriate manager will approve all requisitions.

CCPP035

|                                                           |                |                                |
|-----------------------------------------------------------|----------------|--------------------------------|
| Title:                                                    |                | Procedure #: PP-030            |
| Purchasing Procedure Manual – Requisition Approval Levels |                | Submitted By: Robert J. Ingram |
|                                                           |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                               | Supersedes No: | Page No. 2 of 2                |

#### E. Other Purchases

Unique or unusual purchase requisitions may require special handling. Whenever a requisition is submitted for a unique or unusual item or service, The Buyer or Purchasing Agent will advise the Facility or Department Manager of the circumstances prior to issuance of the order.

CCPP036

|                                                            |                |                                |
|------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Bid Management |                | Procedure #: PP-040            |
|                                                            |                | Submitted By: Robert J. Ingram |
|                                                            |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                | Supersedes No: | Page No. 1 of 3                |

## I. PURPOSE

To define the minimum standards the Chester County Government will follow when procuring goods and services.

## II. SCOPE

This procedure applies to all purchase requisitions.

## III. PROCEDURE

Purchase requisitions must be approved in accordance with Article V (Procurement) of the Chester County Code – Finance and the Chester County Purchasing Policy and Procedure Manual.

### A. Procurement Code adopted; administration

The provisions of this Article are adopted pursuant to S.C. Code §11-35-50, and may be referred to as the "County Procurement Code". The Procurement Code shall be implemented by the County Manager who is authorized to issue regulations consistent with this Code. (S.C. § 4-9-160, § 11-35-50)

### B. Director Contracts and Procurement

The County Manager will designate the Director of Contracts and Procurement.

### C. Purchasing Agent/Buyer

The Director of Contracts and Procurement will designate the county purchasing agent/buyer.

### D. Compliance with state or federal requirements.

Where procurement involves expenditure of state or federal funds subject to procurement regulations, which are more restrictive than the County Procurement Code, the state, or federal regulations shall be followed.

### E. Competitive bidding; exceptions.

All county contracts shall be awarded by competitive sealed bidding except contracts for the following procurements; provided, all contracts for goods, services or projects with a total cost of in excess of \$10,000 must be Approved By: County Council:

CCPP037

|                                                            |                |                                |
|------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Bid Management |                | Procedure #: PP-040            |
|                                                            |                | Submitted By: Robert J. Ingram |
|                                                            |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                | Supersedes No: | Page No. 2 of 3                |

- (1) professional services where the person engaged is customarily employed on a fee basis rather than competitive bidding (e.g., appraiser, architect, auditor, consultant, engineer, legal services, physician);
- (2) proposals invited on a competitive sealed basis;
- (3) negotiations after unsuccessful competitive sealed bidding;
- (4) small purchases under \$800;
- (5) procurements under \$5,000 documented by quotations form (2) qualified sources of supply and a determination by the Director of Contracts and Procurement that the procurement is to the advantage of the county.
- (6) procurements under \$10,000 documented by written quotations form (3) qualified sources of supply and a determination by the Director of Contracts and Procurement and the County Manager that the procurement is to the advantage of the county;
- (7) blanket purchase agreements Approved By: the County Manager and the Director of Contracts and Procurement for repetitive small purchases on a charge account basis not requiring a purchase order for each purchase;
- (8) sole source procurements Approved By: the County Manager and the Director of Contracts and Procurement where there is only a single supplier, compatibility of equipment or parts is the paramount consideration, the item is one of a kind, or the procurement is for printed material.
- (9) procurements in emergency situations declared by the County Manager to involve a threat to public health, safety, or welfare;
- (10) leasing or purchasing of real property or;
- (11) purchasing through state contracts.

#### F. Bidding Procedures

Procedures promulgated by the County Manager shall provide for fair and equitable sealed bidding when applicable to procurement under this article. An invitation to bid or request for proposals may be canceled by notice at any time prior to the opening of bids or proposals. The determination of award of a contract shall be made by council after receiving the recommendation of the county manager or his designated representative for that project. All invitations to bid shall include the provision that the county reserves the right to reject all bids. Tie bids shall be resolved by the flip of a coin by the Director of Contracts and Procurement witnessed by the parties.

#### G. Protests

Invitations to bid shall include procedures for the filing of protests by an actual or prospective bidder who is aggrieved in connection with the solicitation or award of a contract.

CCPP038

|                                                            |                |                                |
|------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Bid Management |                | Procedure #: PP-040            |
|                                                            |                | Submitted By: Robert J. Ingram |
|                                                            |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                | Supersedes No: | Page No. 3 of 3                |

#### H. Debarment or suspension

The Director of Contracts and Procurement may issue a notice of debarment or suspension to a person or firm upon a determination, after reasonable notice and an opportunity to be heard, that there is cause for doing so in the best interest of the county. The determination of the purchasing agent may be appealed to council by written notice filed with the county manager within 10 days after receipt of the determination. The causes for disbarment or suspension shall include, but not be limited to:

- (1) conviction of a criminal offense incident to obtaining or attempting to obtain a public or private contract, or in the performance of such contract;
- (2) conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving of stolen property, or any other offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as a county contractor.
- (3) conviction under antitrust laws arising out of submission of bids or proposals;
- (4) a recent deliberate failure without good cause to perform in accordance with the terms of the contract;
- (5) any other cause determined to be so serious and compelling as to affect responsibility as a county contractor, including disbarment by another governmental entity.



|                                             |                |                                |
|---------------------------------------------|----------------|--------------------------------|
| Title:                                      |                | Procedure #: PP-050            |
| Purchasing Procedure Manual – Informal Bids |                | Submitted By: Robert J. Ingram |
|                                             |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                 | Supersedes No: | Page No. 1 of 1                |

### I. PURPOSE

The purpose of this procedure is to provide a uniform procedure for obtaining informal bids

### II. SCOPE

It is the policy of the purchasing department to have 2 informal bids of \$800.0 to \$4999.00 or more in writing. Items from \$5000.00 to \$9999.99 must have 3 bids in writing. Purchases under \$800 are also considered informal and may be obtained in writing, by telephone, or from a reliable price list.

### III. PROCEDURE

1. The request for quotation form is used to obtain bids on purchases where advertising is not required.

A. The request for quotation is prepared in sufficient quantities to allow one copy per bidder, one for file, and extra copies for unsolicited bidders.

B. The request for quotation is typed and will include:

- Bid Number
- Current Date
- Purchase order number (the number is assigned when the order is placed).
- Item numbers
- Quantity
- Detailed descriptions of article(s) desired.

C. Quotation forms are returned by the bidder and must include:

- Unit Price
- Extension
- Delivery Time
- Terms
- Date
- Company Name
- Official signature of the bidder

2. Quotations are opened and tabulated as the are received.

3. Bids are coordinated with the requesting department to insure specifications are met and that sufficient funds are available before the award is made.

4. The purchasing department then issues a purchase order to cover the purchase.

CCPP040

|                                                               |                |                                |
|---------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Invitation to Bid |                | Procedure #: PP-060            |
|                                                               |                | Submitted By: Robert J. Ingram |
|                                                               |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                   | Supersedes No: | Page No. 1 of 5                |

## I. PURPOSE

The purpose of this procedure is to describe the Chester County Governments policy for purchases of good, services and construction projects where an invitation to bid is required.

## II. POLICY

The Invitation to Bid is required when:

- a. The estimated expenditure is estimated for \$10,000 or more for the purchase of apparatus, supplies, materials, and/or equipment.
- b. The estimated expenditure is \$10,000 or more for construction and /or repair projects.

## III. PROCEDURE

### a. Bid Invitations:

The Invitation to Bid is sent or placed in the hands of prospective bidders. Notice of bid shall be advertised and posted in the purchasing office. The notice will contain the following bidder instructions.

1. Instructions, provisions and precautions to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which the bids are to be delivered/mailed, the maximum time for bid acceptance by the County, and any other special information;  
The purchase description, evaluation factors, delivery of performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;
2. The contract terms and conditions, including warranty and bonding or other security requirements as applicable; and
3. Instructions to bidders to visibly mark as "confidential" each part of their bid which they consider to be proprietary information. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A norm of fourteen (14) calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Director of Contracts and Procurement.

CCPP041

|                                                               |                                |
|---------------------------------------------------------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Invitation to Bid | Policy #: PP-060               |
|                                                               | Submitted By: Robert J. Ingram |
|                                                               | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                   | Supersedes No:                 |
| Page No. 2 of 5                                               |                                |

b. Bid Bond/Deposits:

When the Director of Contracts and Procurement and the County Attorney deems it necessary, bid bond/bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Director of Contracts and Procurement has required such. A successful bidder shall forfeit any surety required by the Director of Contracts and Procurement upon failure on his part to enter into a contract within ten (10) days after the award. He shall also be liable for any costs in excess of his bid price which the county incurs in purchasing commodities or services elsewhere. Bid Bonds and Performance Bonds may include cashiers check.

c. Prebid Conference: (If /When Required)

Holding a conference or site visit early in the solicitation cycle provides an opportunity to emphasize and clarify critical aspects of the solicitation, eliminate ambiguities or misunderstandings, and permits vendor inputs. Prebid conferences/site visits shall be conducted with potential bidders or offerors when issuing solicitations for complex, large or critical requirements. Attendance at conferences or site visits may be optional or mandatory. When mandatory attendance is stipulated, only bids from those firms represented at the conference or visiting site will be accepted. If a modification to the solicitation is required as a result of the conference or site visit, an addendum will be issued.

d. Canceling or Amending a Solicitation:

When canceling a written solicitation, notification should be mailed to all vendors who have been issued a solicitation and a copy of the notice publicly posted. Sealed bids received on canceled bids will be returned unopened. If it is necessary to amend a solicitation, an addendum shall be sent to all potential bidders or offerors who received a copy of the solicitation and thereafter enclosed with any others sent out.

Receipt of Bids

All bids (including modifications/amendments) received prior to the time of opening must be kept secure and, except as provided for under the heading "Unidentified Bids", unopened in a locked bid box. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to insure the security of the bid. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosures or characteristics before bid opening.

CCPP042

|                                                               |                |                                |
|---------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Invitation to Bid |                | Policy #: PP - 060             |
|                                                               |                | Submitted By: Robert J. Ingram |
|                                                               |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                   | Supersedes No: | Page No. 3 of 5                |

e. Unidentified Bids

It is a requirement that all bids have the bid number on the envelope/container/box. Any bid which is unidentifiable will be disqualified.

f. Bid Opening

See Procedure PP - 070

g. Telegraphic Bids:

Telegraphic messages are not acceptable for sealed bids since prices would be exposed prior to the deadline set for the receipt. Telegraphic messages or facsimile transmission may be accepted only for the unsealed bids and must be received by the purchasing office prior to the date and time specified in the solicitation.

When in the opinion of the Director of Contracts and Procurement, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, facsimile bids may be authorized.

i. Bid Tabulation:

As soon as practical after the opening, the bids will be tabulated and an award made to the lowest responsive and responsible bidder who submits a bid that is deemed to be in the best interest of the county.

j. Responsible Bidder

In determining a responsible bidder, a number of factors chosen from but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;
2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
3. Have a satisfactory record of performance;
4. Have a satisfactory record of integrity; and
5. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

CCPP043

|                                                               |                |                                |
|---------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Invitation to Bid |                | Policy #: PP – 060             |
|                                                               |                | Submitted By: Robert J. Ingram |
|                                                               |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                   | Supersedes No: | Page No. 4 of 5                |

k. Responsiveness of Bids:

To be considered for an award, a bid must comply in all aspects with the invitation for bids. Responsiveness related to compliance with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the invitation for bids can result in a bidder being declared non-responsive, i.e. Failure to sign the bid, substitution of vendor's terms, deletion of terms and conditions stated in the invitation for bids, failure to offer a product or service that meets the requirements of the invitation for bids, etc.

l. Price Unreasonableness:

Any offer may be rejected and rebid if the Director of Contracts and Procurement determines in writing that it is unreasonable as to price. This can be accomplished by comparison with previous procurements of the same type goods or service considering economic trends and quantities purchased. Purchasing Department of other state or county agencies are good sources of pricing information.

m. Award of Bids:

In determining the lowest responsive and responsible bidder, in addition to price, there shall be considered the following:

1. The ability, capacity and skill of the bidder to perform the contract.
  2. Whether the bidder can perform the contract within the time specified, without delay or interference.
  3. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
  4. The quality of performance on previous contracts.
  5. The previous and existing compliance by the bidder with laws and ordinances related to the contract.
  6. The sufficiency of the financial resources to perform the contract to provide the service.
  7. The quality, an availability and adaptability of the supplies or contractual services to the particular use required.
  8. The ability of the bidder to provide future maintenance and service.
  9. The discount terms and conditions of the bids.
  10. Delivery time.
- When necessary for the best interest of the County, bid criteria to determine acceptability may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price are to be given to each bidder.

Bid award recommendations where the award exceeds \$10,000 shall be submitted to the County Manager with a request for approval by the Chester County Council.

CCPP044

|                                                 |                |                                |
|-------------------------------------------------|----------------|--------------------------------|
| Title:                                          |                | Policy #: PP -060              |
| Purchasing Procedure Manual – Invitation to Bid |                | Submitted By: Robert J. Ingram |
|                                                 |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                     | Supersedes No: | Page No. 5 of 5                |

n. Single Response to a Solicitation:

Even though multiple sources are solicited, there are occasions when only one response is received for a solicitation. In such cases, the buyer should investigate to determine why other bidders or offerors did not respond and make a determination whether to award or to reject the bid or offer and re-solicit. In addition, prior to award, the buyer must make a written determination that the price is fair and reasonable.

o. Cash Discounts:

Prompt payment discounts will normally not be considered in determining the lowest responsive bidder. If a bidder does offer a cash discount for prompt payment, this will not be considered in evaluation, but should be included on the purchase order, and the discount taken if invoices are processed and payment made within the stipulated time frame. However, if the Director of Contracts and Procurement knows that the County regularly processes payment within a prescribed time frame, such as 30 days, and wishes to consider cash discounts in the evaluation, then a statement must be included in the bid solicitation stating "cash discounts for prompt payments within 30 days will be considered in determining net low bid."

p. Tie Bids:

All tie bids will be determined by the flip of a coin by the Director of Contracts and Procurement or his designated representative. The coin toss must be witnessed and the results recorded.

q. Rejection of Bids:

1. Application: Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder with other provisions listed under "award". Every effort should be made to anticipate changes in a requirement prior to the date of opening and notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices. As a general rule, after opening, an invitation for bids should not be cancelled and re-advertised due solely to increased requirements for bids and the additional quality required should be treated as a new procurement. Any bid which fails to conform to the essential requirements of the invitation for bid shall be rejected.
2. Nonresponsive Bids and Alternate Bids: Any bid which does not conform to the specification and the delivery requirements in accordance with the bid may be rejected, unless the invitation specifically authorized the submission of alternate bids and the offered alternatives meet the requirements.

|                                                                    |                |                                |
|--------------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Bid Opening Procedures |                | Procedure #: PP-070            |
|                                                                    |                | Submitted By: Robert J. Ingram |
|                                                                    |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                        | Supersedes No: | Page No. 1 of 2                |

### I. PURPOSE

This procedure is to set forth a uniform method of opening sealed bids

### II. POLICY

It is Chester County Governments policy that all sealed formal bids for purchases, construction projects, and services be opened by the purchasing department.

It is also the Chester County Governments policy that the bid opening, evaluation, and award process be governed by the standards of openness and impartiality.

### III. PROCEDURE

1. The Director of Contracts and Procurement or his designee shall decide when the time set for bid opening has arrived, normally between 2:00 PM and 3:00 PM, and shall so declare to those present. He/she shall then personally and publicly open all bids received prior to that time and when practicable, read them aloud to those persons present and have the bids recorded. The following information is read aloud: bidders name, unit price or lot price as may be applicable, discount terms offered if discount terms are to be considered in making the award, and brand name and model number, if requested by the bid attendees. Questions on contents of other bidder's bids shall not be answered until evaluation is complete and award has been made. Bids will not be evaluated at this time. The tabulation shall be open to public inspection.
2. Disclosure of Bid Information: Only the information disclosed by the County Director of Contracts and Procurement or his designee at bid opening is considered to be public information under the freedom of information act, Chapter 3 of Title 30, until award is made. It is the practice of the purchasing department that only bid prices will be discussed in the place for bid opening.
3. Postponement of Bid Opening: An amendment postponing the bid opening the bid openings may be issued by the Director of Contracts and Procurement as deemed necessary. An amendment will be mailed to all bidders that were mailed the original IFB.
  - a. Causes beyond the control of the bidders (i.e., flood, fire, accident, weather conditions.
  - b. When emergency or unanticipated events interrupt normal county operations.
  - c. Changes in specifications or scope of bids that would require additional time.

CCPP046

|                                                      |                |                                |
|------------------------------------------------------|----------------|--------------------------------|
| Title:                                               |                | Policy #: PP - 070             |
| Purchasing Procedure Manual – Bid Opening Procedures |                | Submitted By: Robert J. Ingram |
|                                                      |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                          | Supersedes No: | Page No. 2 of 2                |

4. Formal bids for purchases or services and construction projects that require a bid deposit must be accompanied by a deposit in the form of cash, cashiers check, certified check, or bid bond. Personal or company checks that are not certified will not be accepted. Facsimile bid bonds are not acceptable. Bids with out the proper bid deposit, if required, will not be read.
5. Bids received after the hour designated for the opening will not be read, considered or accepted. It is the bidder's responsibility to insure their bid arrives prior to the designated time.
6. At least three bids must be received for construction projects. If less than three bids are received the bids are not opened and the project must be re-advertised.

CCPP047



|                                                                    |                |                                |
|--------------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual - Preparing Requisitions |                | Procedure #: PP-080            |
|                                                                    |                | Submitted By: Robert J. Ingram |
|                                                                    |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                        | Supersedes No: | Page No. 1 of 4                |

#### I. PURPOSE

This procedure is to inform users about purchase requisitions and how to correctly complete them.

#### II. SCOPE

This procedure applies to all personnel who are required to fill out purchase requisitions.

#### III. PROCEDURE

- a. Requisitions shall be prepared far enough in advance to permit the Purchasing Department to obtain competitive prices, and to allow sufficient time for deliveries to be made.
- b. The following minimum time requirements are necessary to secure competitive prices after receipt of requisition(s) and correct specifications by the Purchasing Office.
  1. Two to three days for items not requiring formal quote (under \$800.00).
  2. Three to seven days for verbal quotes or written bids (\$800.00 to \$4999.00)
  3. Two to four weeks for items upon which advertising is not required, but will be formally bid (\$5000.00 to \$9999.00).
  4. Six to eight weeks for items requiring formal bids, advertising and county council approval (\$10,000.00 and up).

#### IV. REQUISITION FORMS

- a. The requisition form is an important communication tool between the end-user and the Purchasing Department. The form has been designed to control requests for all purchases of material and services, therefore, all acquisition requests must be submitted to Purchasing on this form. The requisition forms are 2 part forms and are pre-numbered. The uses of parts are as follows:

Part 1 – Original White Copy – Maintained in Purchasing with the purchase order for their records.

Part 2 – Canary Copy – To be retained by the requesting department/agency for their records.

- b. In order that the greatest utilization be gained from this form, it must be filled out completely. The following instructions are to be applied when completing the purchase requisition form.

1. Department – Enter the Department name.

CCPP048

|                                                     |                |                                |
|-----------------------------------------------------|----------------|--------------------------------|
| Title:                                              |                | Policy #: PP -080              |
| Purchasing Procedure Manual – Preparing Requisition |                | Submitted By: Robert J. Ingram |
|                                                     |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                         | Supersedes No: | Page No. 2 of 4                |

2. Date – Enter the date on which the requisition is prepared.
3. Account # – Enter the accounting code for your department to include cost center and object code. Ensure funds availability.
4. Suggested Supplier – Enter the suggested supplier, phone number, and fax number if known.
5. Date Required – Date that you need the item(s) such as May 24, 2003. Be realistic and consider the lead time and delivery time. Avoid ASAP, Immediate or Rush. Where we feel we cannot meet your date, we will advise you so you will be able to plan ahead or choose another course of action or obtain a more realistic date.
6. Quantity – Enter the amount desired for each item desired on the requisition.
7. Unit – How is the item packaged – each, set, doz., pk., ream, etc.
8. Item # - Manufacturers or vendors part number if known.
9. Description – The description should be specific and complete, so that the item will be easily identified. Description should include manufacturer, model number, color or size if applicable, special consideration, etc. Complete justification is required when no substitutes are desired. When any item requisitioned has to be compatible with existing equipment, the reason must be clearly explained in the requisition, and a request for a specific brand or model, (permitting no substitutes) must be justified.
10. Unit Price – Include your best estimate of what you think it will cost or what you are willing to spend. If a quote is received, indicate the person's name that gave the quote.
11. Extended Price – Multiply unit price by the quantity and enter total. Tax must be added after a subtotal at the bottom of the order.
12. Order Confirmation # - To be entered by purchasing if vendor supplies confirmation number.
13. Quotes Required – Denotes number of quotes required.
14. Sealed Bids Required – Determined by Purchasing.
15. RFP Required – Determined by Purchasing.
16. Approved By: County Manager, Council – Date approved filled in by Purchasing.

CCPP049

|                                                                   |                |                                |
|-------------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Preparing Requisition |                | Policy #: PP-080               |
|                                                                   |                | Submitted By: Robert J. Ingram |
|                                                                   |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                       | Supersedes No: | Page No. 3 of 4                |

17. Department Head or Designee Signature.

18. Print Name – Print the name of the person who signed the requisition.

19. Start Date - Date Processing Started.

20. Completion Date – Date Purchase Process completed.

- c. Requisitions should be reviewed carefully before sending them to the purchasing department. Accuracy is most important – make sure that the requisition is fully legible.
- d. The Director of Contracts and Procurement or designee has the authority and the responsibility to review requisitions to insure that specifications are not duly restrictive and prohibit reasonable competition. Incomplete, inaccurate or unduly restrictive requisitions may be returned for correction, revision, and/or explanations.
- e. If there are insufficient funds for the purchase, the requisition may be returned to the ordering department.

#### V. RESPONSIBILITY OF SPECIFICATIONS

The preparation of specifications is the joint responsibility of the Purchasing Department and the using department or agency. Specifications shall permit competition except on non-competitive materials or services. In general, specifications should define the level of performance required rather than specific brand name. For the benefit of vendors and the department, specifications must be clear and concise.

#### VI. REVIEW OF SPECIFICATIONS

Prior to issuance of bids or processing of requisitions with specifications attached, review of the specifications for certain commodities and services shall be made by other departments within the County to insure open competitive bidding and up-to-date specifications. Some examples are as follows:

| <u>Type of Equipment/Service Requested</u> | <u>Department Review</u>    |
|--------------------------------------------|-----------------------------|
| Computer Hardware and Software             | Information Technology (IT) |
| Building Construction and Maintenance      | Building Maintenance        |
| Radios/Communication Equipment             | Support Services            |

CCPP050

|                                                       |                |                                |
|-------------------------------------------------------|----------------|--------------------------------|
| Title:                                                |                | Policy #: PP - 080             |
| Purchasing Procedures Manual – Preparing Requisitions |                | Submitted By: Robert J. Ingram |
|                                                       |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                           | Supersedes No: | Page No. 4 of 4                |

## VII. REQUISITION YEAR END CUTOFF DATE

Requisitions to be charged to each fiscal year must be received by the Purchasing Department early enough to allow for processing and delivery prior to June 30. The Purchasing Department will publish a cutoff date annually. The cutoff date will be the first part of June of each year. Exceptions can be made for emergencies, in which each case the requisition must be accompanied with proper justification. Time must be allowed to complete the delivery, submit the invoice and process payment by June 30. Vendor deliver on requisitions received late may not be made until the new fiscal year which would then require payment from the new fiscal year funds. Please keep in mind that a longer lead time is required for procurement made by competitive scaled bidding.

CCPP051

|                                                             |                |                                |
|-------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Purchase Orders |                | Procedure #: PP-090            |
|                                                             |                | Submitted By: Robert J. Ingram |
|                                                             |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                 | Supersedes No: | Page No. 1 of 2                |

## I. PURPOSE

A Purchase Order authorizes the vendor to ship and invoice the materials and services as specified. Purchase Orders shall be written so they are clear, concise and complete. This will prevent any unnecessary misunderstanding and correspondence with suppliers.

## II. SCOPE

This procedure applies to all personnel.

## III. PROCEDURE

- a. **When Issued:** Computer generated numbered purchase orders shall be issued upon receipt of an acceptable requisition and after receipt of competitive bids, determination whether funds are available, and after council approval if necessary.
- b. **Who Issues:** Only purchasing personnel shall issue purchase orders. The using department will not enter into negotiations with any supplier for the purchase of supplies, materials or equipment. All purchase orders shall be transmitted to the supplier by the Purchasing Office.
- c. **Routing of Order:** A standard purchase order form, containing copies, is used to make all purchases and is routed as follows.
  1. White original copy: Transmitted to the vendor (to include any enclosures, etc.) by the Purchasing Office.
  2. Canary copy: To the department originating the requisition (for information and filing).
  3. Pink copy: Retained by the Purchasing Office and filed with purchase requisition and bid information alphabetically by vendor
- d. **Change Order:** A Change Order to a Purchase Order is handled in much the same way as the issuance of a Purchase Order. The department requesting the Change Order shall submit to the Purchasing Office a change Order Request indicating the complete justification for the changes, i.e., increases in quantity, addition of freight charges, addition or deletion of items, etc. Change Order requests that list a price change with no explanation for the increase or decrease will be returned to the originator. In the event that a Change Order is to be issued against a Purchase Order which was placed as a result of County Council action, this Change Order must be processed through the County Manager for approval of the change.

CCPP052

|                                               |                |                                |
|-----------------------------------------------|----------------|--------------------------------|
| Title:                                        |                | Policy #: PP-090               |
| Purchasing Procedure Manual-- Purchase Orders |                | Submitted By: Robert J. Ingram |
|                                               |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                   | Supersedes No: | Page No. 2 of 2                |

- e. **Expediting and Follow-Up:** On a periodic basis, the Purchasing Office shall make inquiries to the vendor as to the status of a particular order after issuance. Special follow-up may be requested by the ordering department.
- f. **Difficulties After Receipt of Service or Item:** The Purchasing Department shall handle with the vendor any problems or difficulties with received items or services.
- g. **Prepayment Procedures:** Purchase Orders may be issued on items requiring prepayment. Departments must attach the original document showing prepayment required, to the requisition prior to forwarding to the Purchasing Department.
- h. **Inspection:**
  - 1. The receiving agency shall inspect deliveries of supplies, materials and equipment or the furnishing of contractual services to insure their conformance with the specifications set forth in the purchase order or contract.
  - 2. Any department which has the necessary facilities and staff for adequate inspection may be authorized and directed by County Council, on the recommendation of the County Director of Contracts and Procurement to inspect deliveries made to other departments.
  - 3. The Director of Contracts and Procurement shall have authority to require chemical and physical tests of samples with bids and samples of deliveries to the extent necessary to determine their quality and conformance with the specifications. For such tests, the Director of Contracts and Procurement shall have the authority to make use of facilities of any department or to engage the services of any outside laboratory.

CCPP053

|                                                            |                |                                |
|------------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Blanket Orders |                | Procedure #: PP-100            |
|                                                            |                | Submitted By: Robert J. Ingram |
|                                                            |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                | Supersedes No: | Page No.1 of 2                 |

#### I. PURPOSE

This procedure establishes the requirements for Blanket Orders.

#### II. SCOPE

This procedure applies to all personnel.

#### III. PROCEDURE

A blanket purchase agreement is a simplified method of filling anticipated needs for small quantities of supplies and services with qualified sources of supply. This will reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase orders. All competitive sources will be given an equal opportunity to furnish supplies or services under such agreements. The authority to issue blanket purchase agreements is vested only in the Purchasing Department.

#### IV. Terms and Conditions: Blanket purchase agreements must contain the following provisions:

- a. Description of agreement – a statement that the supplier shall furnish goods and services, described therein in general terms, if and when requested by the Director of Contracts and Procurement or his designated representative(s), during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the suppliers are in position to furnish.
- b. Extent of obligation – a statement the County is obligated only to the extent of authorized calls actually placed against the agreement.
- c. Notice of individuals authorized to place calls and dollar limitations.
- d. Delivery Tickets – a requirement that all shipments under the agreement shall be accompanied by delivery tickets or sales slips which must contain the following minimum information
  1. Name of supplier (business name);
  2. Blanket purchase agreement number;
  3. Date of sale;
  4. Itemized list of goods or services furnished;
  5. Quantity, unit price, and extension of each item; and
  6. Date of delivery or shipment.

CCPP054

|                                              |                |                                |
|----------------------------------------------|----------------|--------------------------------|
| Title:                                       |                | Policy #: PP -100              |
| Purchasing Procedure Manual – Blanket Orders |                | Submitted By: Robert J. Ingram |
|                                              |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                  | Supersedes No: | Page No.2 of 2                 |

- e. Invoices - An itemized invoice shall be submitted at least monthly or upon expiration of the agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received.
- f. Receipt and Acceptance – Acceptance of supplies or services shall be indicated by signature and date. A sales slip or delivery ticket may be used for this purpose.
- g. Review Procedures – Blanket purchase agreements files will be reviewed at least semi-annually to assure that authorized procedures are being followed. Such agreements shall be issued for a period not longer than one (1) year.

CCPP055



|                                                          |                |                                |
|----------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Credit Cards |                | Procedure #: PP-110            |
|                                                          |                | Submitted By: Robert J. Ingram |
|                                                          |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                              | Supersedes No: | Page No. 1 of 2                |

#### I. PURPOSE

This procedure is to set forth a uniform method of using Chester County credit cards.

#### II. SCOPE

This procedure applies to all employees.

#### III. RESPONSIBILITY

Cardholders are responsible for the following:

- Informing vendors of the government's tax-exempt status before the purchase transaction is processed
- Collecting and saving sales receipts
- Writing the account number or description of the account or project to be charged on the back of each receipt
- Reporting discrepancies to vendors
- Matching receipts and the monthly statement
- Identifying and handling disputed charges
- Signing the monthly statement
- Reviewing/verifying charges with the account manager
- Submitting statements and receipts to the account manager before the specified deadline
- Attending a mandatory training course

Account managers have the following responsibilities

- Reviewing the monthly purchasing card statements with cardholders
- Verifying and assigning account codes
- Signing the appropriate payment request forms

#### IV. RULES OF PURCHASING CARD USE

- Personal use of the card – for goods, cash advances, postage, vehicle repairs, gas and oil products, travel expenses, meals and entertainment, building repairs, telephone calls, capital equipment, medical services, cellular telephones, or any other purposes – are strictly prohibited. The cards must be used only to purchase items that can be picked up, or to place telephone, facsimile, or electronic orders. Employees must use secured systems to make Internet purchases. Backordering is prohibited.

CCPP056

|                                                          |                |                                |
|----------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual – Credit Cards |                | Procedure #: PP-110            |
|                                                          |                | Submitted By: Robert J. Ingram |
|                                                          |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                              | Supersedes No: | Page No. 2 of 2                |

- Purchase Limits – Cardholders are allowed to make multiple purchases, but the total invoice, including shipping, should not exceed the monthly or single purchase limit. That limit is to be Approved By: Crandall O. Jones the Director of Contracts and Procurement..
- Sales Tax – The government will not pay sales tax. If the tax is charged in error, the cardholder must contact the vendor and obtain a credit equal to the sales tax amount. Vendors will not be allowed to refund cash.
- Unauthorized Purchases – Employees making unauthorized purchases will be subject to disciplinary action and required to pay for any transactions. The account manager is responsible for reviewing with the cardholder and resolving any questionable purchases. If the account manager is not satisfied that a purchase was necessary and for official use, the cardholder should be required to provide a credit voucher proving the item(s) were returned for credit, or a personal check made payable to the bank for the full amount of the purchase, plus any applicable sales tax. The account manager should then send the check to the finance department, along with an explanation of why the violation occurred.
- Prohibited Actions – The following is prohibited:
  - 1) Purchase of any item(s) other than those authorized under the purchase card policy
  - 2) Purchases that exceed the purchasing card limits
  - 3) Failure to report lost or stolen cards
  - 4) Purchases from vendors that create a conflict of interest (that is, purchases from companies owned or operated by employees of the government or their relatives)
  - 5) Inadequate recordkeeping and/or documentation of purchases
  - 6) Acceptance of cash in lieu of a credit to the statement
  - 7) Splitting of purchases within the single purchase limit
- Lost or Stolen Cards – The cardholder is responsible for notifying the bank or company if a card is lost or stolen. The cardholder is required to obtain written confirmation by fax or mail, of the card cancellation request. The cardholder's oral report that confirmation is not acceptable.
- Termination Procedures – Personnel should notify the purchasing card administrator and the account manager when an employee holding a purchasing card leaves or is terminated. The terminated employees must surrender the card during the exit interview. The government official conducting the exit interview should cut the card in half and return the two halves to the purchasing card administrator who, in turn should return the destroyed card to the issuing authority.

CCPP057

|                                                                  |                |                                |
|------------------------------------------------------------------|----------------|--------------------------------|
| Title:                                                           |                | Procedure #: PP-120            |
| Purchasing Procedure Manual – Delegation of Commitment Authority |                | Submitted By: Robert J. Ingram |
|                                                                  |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                                      | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

To delegate commitment authority for purchases within the Chester County Government.

II. SCOPE

This procedure applies to all purchases of materials, equipment, supplies and services.

III. GENERAL

Purchasing policy grants the Director of Contracts and Procurement the authority and responsibility for the procurement of all materials, equipment, supplies and services necessary to support the Chester County Government. Within this authority, the Directory of Contracts and Procurement may delegate to other specific individuals or departments the responsibility of some of the procurement duties.

IV. DELEGATION OF AUTHORITY

None delegated at this time.

CCPP058

|                                                          |                |                                |
|----------------------------------------------------------|----------------|--------------------------------|
| Title:<br><br>Purchasing Procedure Manual - Encumbrances |                | Procedure #: P -130            |
|                                                          |                | Submitted By: Robert J. Ingram |
|                                                          |                | Approved By: Crandall O. Jones |
| Effective Date: 1 July 2003                              | Supersedes No: | Page No. 1 of 1                |

I. PURPOSE

This procedure is used to establish the responsibility for ensuring that funds are available for purchases or services requested

II. SCOPE

It is the policy of the Chester County Government that local government funds be encumbered prior to the ordering of materials, services or equipment.

It is the department head's responsibility to ensure that funds are available before a purchase requisition is sent to the purchasing department.

III. PROCEDURE

1. Before submitting a requisition for material, services, or equipment, the monthly expenditure report should be checked to determine if funds are available in the account code for the item(s) being requested. The account code used should be the most descriptive of the item(s) being requested, regardless of where the budget is located. The Financial Accounting System "Charts of Accounts" gives a general description of each account code.
2. Capital outlay (equipment costing \$500 or more) must be Approved By: the County Manager. An approved capital outlay form must be attached to the purchase requisition if it had not been budgeted for or if it is a different item than what had been budgeted.
3. When there is a lack of sufficient funds in an account code, a transfer request must be made to the County Manager for approval and then forwarded to the Finance Director.

CCPP059

|                                                                      |                |                             |
|----------------------------------------------------------------------|----------------|-----------------------------|
| Title: Uniform Solicitation Format<br><br>Request For Proposal (RFP) |                | Policy #: PP-140            |
|                                                                      |                | Submitted By: Robert Ingram |
|                                                                      |                | Approved By Robert Ingram   |
| Effective Date: 14 Apr 2005                                          | Supersedes No: | Page No.1 of 15             |

#### **I. PURPOSE:**

The purpose of this procedure is to describe the Chester County Governments policy for the Uniform Solicitation Format for Requests For Proposals. This format may be modified to fit the situation.

#### **II. POLICY**

The Solicitation Parts labeled with a roman numeral will exist in every solicitation issued by the Chester County Purchasing Department. Regardless of what is being acquired or what type of solicitation is being used. If a Part has no contents, the header should be followed by "Intentionally Left Blank". Several Part contain subheadings that will also exist in every solicitation. Even though there is a format, flexibility is an ingredient.

#### **III. ATTACHMENTS**

The following items should be added as attachments.

- a. NON-COLLISION AFFIDAVIT
- b. CERTIFICATE OF FAMILIARITY
- c. REQUEST FOR WRITTEN RESPONSE TO QUESTIONS
- d. "NO RESPONSE" RESPONSE FORM

#### **IV. FORMAT**



Chester County, South Carolina

**REQUEST FOR PROPOSAL**

**Solicitation:**

Description:

Using Governmental Unit:

Procurement Officer:

Issue Date:

**CLOSING DATE AND TIME:**

**PREPROPOSAL CONFERENCE:**

**CLOSING LOCATION:** Purchasing Department, Chester County  
Courthouse, 1st Floor, 140 Main Street, Chester SC

|                                                                                                                               |                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <b>Return Proposal To:</b> Chester County<br>Office of Purchasing<br>Phone: PO Drawer 580<br>(803) 581-6268 Chester, SC 29706 | <b>Express / Hand Carry To:</b> Chester County<br>Office of Purchasing<br>140 Main Street<br>Chester, SC 29706 |
|-------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|

\*\*\* Solicitation Number and Opening Time must be shown on outside of sealed envelope \*\*\*

**NUMBER OF COPIES TO BE SUBMITTED:**

**PROCUREMENT FOR:**

The above solicitation number shall be shown on the front of the sealed envelope in which this proposal response is submitted. Chester County assumes no responsibility for unmarked envelopes being considered for award. Only one (1) proposal per envelope. Authorized company representative is required to sign in ink below on this page in the space provided. Any proposal not signed will be automatically rejected. It is requested that completed proposals be either typewritten or handwritten in black ink only. Facsimiles are not acceptable. If County offices are closed due to inclement weather, the proposal response shall be opened at the same scheduled hour on the 3rd working day (excluding County observed holidays) after the scheduled proposal opening date. Subject to the conditions, provisions and the enclosed information, sealed proposals will be received at this office until the stated date and time and then publicly opened.

Robert J. Ingram  
Director of Contracts and Procurement

In compliance with the request for proposal, and subject to all conditions thereof, the undersigned offers and agrees to furnish any or all items proposed.

|                      |                 |          |
|----------------------|-----------------|----------|
| AUTHORIZED SIGNATURE | PRINT NAME      | DATE     |
| COMPANY NAME         | PHONE           | FAX      |
| MAILING ADDRESS      | STATE           | ZIP CODE |
| EMAIL ADDRESS        | FEDERAL TAX NO. |          |

CCPP061

2

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## SOLICITATION OUTLINE

- I. Scope of Solicitation
- II. Instructions to Offerors
  - A. General Instructions
  - B. Special Instructions
- III. Administrative Rules For RFP
- IV. Terms and Conditions
- V. Scope of Work / Specification  
May be Blank if Bidding Schedule / Cost Proposal Attached
- VI. Calendar of Events
- VII. Exhibits

### **I. SCOPE OF SOLICITATION**

It is the intent of the County of Chester South Carolina, Purchasing Department to Solicit proposals for \_\_\_\_\_ in accordance with all requirements stated herein.

### **II. INSTRUCTIONS TO OFFERORS**

#### **i. General Instructions**

##### **1.0 DEFINITIONS**

1.01 Except as otherwise provided herein, the following definitions are applicable to all parts of the solicitation. For additional definitions see the terms and conditions below.

- 1. AMENDMENT – means a document issued to supplement the original solicitation document.
- 2. COUNTY – means the County of Chester South Carolina.
- 3. BUYER – means the Procurement Officer.
- 4. COVER PAGE – means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the cover page.
- 5. OFFER – means the bid or proposal submitted in response to this solicitation. The terms "Bid" and "Proposal" are used interchangeably with the term "Offer."
- 6. OFFEROR – means the single entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror." See bidding provisions entitled "Signing Your Offer" and "Bid/Proposal as Offer to Contract."
- 7. PROCUREMENT OFFICER – means the person, or his successor, identified as such on the Cover Page.
- 8. YOU and YOUR – means Offeror.
- 9. SOLICITATION – means this document, including all its parts, attachments, and any Amendments.
- 10. USING GOVERNMENTAL UNIT – means the Using Governmental Unit(s) identified on the Cover Page.
- 11. SUBCONTRACTOR – means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

##### **2.0 COMPETITION**

2.01 This solicitation is intended to promote competition. If any language, specifications, items and conditions, or any combination thereof restricts or limits the requirements in this solicitation to a single source, it shall be the responsibility of the interested vendor to notify the Purchasing Office in writing within five (5) days prior to the opening date. The solicitation may or may not be changed but a review of such notification will be made prior to the award.

##### **3.0 COUNTY AS PROCUREMENT AGENT**

- 3.01 Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, The County Council Chairman, County Manager and the Contracts and Procurement Director are the only government officials authorized to bind the government with regard to this procurement. Purchasing Liability, the Procurement Officer is an employee of the County acting in behalf of the Using County Unit(s) pursuant to the County Procurement Code. Any contracts awarded as a result of this procurement are between the contractor and the Using County Unit(s). The Procurement Office is not a party to such contracts, unless and to the extent that the procurement office is a using county unit, and bears no liability for any party's losses arising out of relating in any way to the contract.

**4.0 ADMENTS TO SOLICITATION**

- 4.01 The solicitation may be amended at any time prior to opening. Bidders shall acknowledge receipt of any amendment to this solicitation by signing and returning the amendment, by letter, or by submitting a bid that indicates in some way that the bidder received the amendment.

**5.0 BID / PROPOSAL AS OFFER TO CONTRACT**

- 5.01 By submitting Your Bid or Proposal, You are offering to enter into a contract with the using County Unit. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity: "joint bids" are not allowed.

**6.0 DUTY TO INQUIRE**

- 6.01 Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the County's attention.

**7.0 QUESTIONS FROM OFFERORS**

- 7.01 Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. The County seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

**8.0 RESTRICTIONS APPLICABLE TO OFFERORS**

- 8.01 By submitting an Offer, You agree not to discuss this procurement activity in any way with any Using Governmental Unit or its employees, agents or officials. All communications must be solely with the Procurement Officer. This restriction expires once a contract has been formed and may be lifted by express written permission from the Procurement Officer.

**9.00 PROPRIETARY/CONFIDENTIAL INFORMATION**

- 9.01 Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Freedom of Information Act; however, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state reasons why protection is necessary. Disposition of material after award is made should be stated by the offeror. No information, materials or other documents relating to this procurement will be presented or made otherwise available to any other person, agency, or organization until after award.

9.02 All offerors must visibly mark as "Confidential" each part of their proposal, which they consider to contain proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section 11-35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute are:

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 offeror.

9.03 MARKING YOUR ENTIRE PROPOSAL CONFIDENTIAL/PROPRIETARY IS NOT IN CONFORMANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT.

**10.0 DO NOT OMIT TAXES FROM PROPOSAL**

10.01 Do not omit any taxes in your price the County may be required to pay. Enter as separate Line item.

**11.0 SIGNING YOUR OFFER**

11.01 Every Offer must be signed by an individual with actual authority to bind the Offer.

11.02 If the Offeror is an individual, the offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.

11.03 If the Offeror is a partnership, the Offer must be submitted in the partnership names, followed by the words "by its Partner," and signed by a general partner.

11.04 If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.

11.05 An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs 13.02 through 13.04 above for each type of participant.

11.06 If an Offer is signed by an agent, other than as stated in subparagraphs 13.02 through 13.05 above the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

**12.0 DEADLINE FOR SUBMISSION OF OFFER**

12.01 Any offer received after the procurement officer of the County or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the county mail room which services the purchasing office prior to bid opening.

**13.00 SUBMITTING YOUR OFFER OR MODIFICATIONS**

13.01 Offers and offer modifications shall be submitted in sealed envelopes or packages:

- (1) Addressed to the office specified in the Solicitation.
- (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the offeror.

13.02 Each Offeror must submit the number of copies indicated on the Cover Page.

13.03 Offerors using commercial carrier service shall ensure that the Offer is addressed and marked on the

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outermost envelope or wrapper as prescribed in paragraphs 14.01.1 and 14.01.2 of this provision when delivered to the office specified in the Solicitation.

- 13.04 Facsimile Offers, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

*Any proposals received after the scheduled deadline, will be immediately disqualified. The County assumes no responsibility for delivery of proposals, which are mailed.*

ALL MAIL IS PICKED UP FROM THE US POSTAL SERVICE ONCE DAILY AROUND 9:30 AM (EXCLUDING WEEK-ENDS AND HOLIDAYS).

#### 14.0 PUBLIC OPENING

- 14.01 Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last amendment, whichever ever is applicable. Proposals received one minute after the designated time will be considered late and will be rejected. Proposals will be opened at that time.

#### 15.0 RESPONSIVENESS / IMPROPER OFFERS

- 15.01 Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- 15.02 Multiple Offers. Offers may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. While multiple Offers may be submitted, each must be submitted separately. If this solicitation is A Request for Proposal, each separate Offer must include a separate price proposal.
- 15.03 Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as non-responsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the County cannot be determined. Offerors will not be given an opportunity to correct any material non-conformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [§11-35-1520 (13)]
- 15.04 Unbalanced Bidding. The County may reject an Offer as non-responsive if the prices bid are materially unbalanced between line items or sub-line items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the County even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

#### 16.0 AWARD

- 16.01 The award of the project is conditional not only upon the proposal but also upon the qualifications of the offeror and the offer's ability to complete the project within the time frame. It is the intent of the County to award these projects to the most responsive, responsible Offeror. Considering budget restraints, it is possible that sufficient funds may not be available for all projects. Therefore, the County reserves the right to negotiate with the most responsive offeror, and award as many projects as possible. The award can be made to one or a multiple of vendors, whichever is in the best interest of the County, or unless otherwise stated on bidder's schedule. All ties will be resolved by the flip of a coin.

#### 17.0 AWARD NOTIFICATION

- 17.01 Notice regarding the County's intent to award a contract will be posted in the County Purchasing Office. The date and location of posting will be announced at opening. A bidder that requires a copy of the award notification must supply a self-addressed, stamped envelope.

#### 18.0 PROTESTS

- 18.01 Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest in writing within fifteen (15) days of the date of issue of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of contract shall protest within fifteen (15) days of the date notification of award is posted in accordance with this code. A protest shall be in writing, submitted to the Contracts and Procurement Director, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided §11-35-4210] Direct all correspondence to Director Contracts and Procurement, P. O. Box 580, Chester, South Carolina, 29706.

## B Special Instructions

### 1.0 PRE-PROPOSAL: CONFERENCE

#### USE ONE OF THE FOLLOWING

##### PRE-PROPOSAL CONFERENCE – MANDATORY

There will be a mandatory pre-proposal conference at \_\_\_\_ M on \_\_\_\_ at the \_\_\_\_\_. Questions concerning the contents of the project and procedural aspects of the RFP will be answered at this time.

NOTE: Attendance at the pre-proposal conference is a prerequisite to submitting a proposal.

Any questions or requests for information must be submitted in writing prior to the adjournment of the Pre-Proposal Conference. Questions may be mailed to the conference. Any written questions received prior to during or after the conference will be responded to in the form of a written amendment to the RFP and mailed, faxed or e-mailed to all offerors who attend the conference. Any questions not answered during the conference will also be responded to in writing and mailed, faxed or e-mailed to all offerors in attendance at the conference.

##### PRE-PROPOSAL CONFERENCE

There will be a pre-proposal conference at \_\_\_\_ M on \_\_\_\_ at the \_\_\_\_\_. Questions concerning the contents of the project and procedural aspects of the RFP will be answered at this time. All offerors are encouraged to attend.

Any questions or requests for information must be submitted in writing prior to the adjournment of the Pre-Proposal Conference. Questions may be mailed prior to the conference to the Contracts and Procurement Director. Any written questions received prior to during or after the conference will be responded to in the form of a written amendment to the RFP and mailed, faxed or e-mailed to all offerors who attend the conference. Any questions not answered during the conference will also be responded to in writing and mailed, faxed or e-mailed to all offerors in attendance at the conference.

##### PRE-PROPOSAL CONFERENCE – NOT REQUIRED

Due to the possibility of negotiating with any offeror submitting a proposal which appears to be eligible for contract pursuant to the section criteria set forth in this Request for Proposal (RFP), prices will not be divulged at time of opening. Offerors who desire to receive a copy of the Statement of Award must include a self-addressed stamped envelope.

### 2.00 SUBMISSIONS OF QUESTIONS

#### 2.01 Primary Contact for Questions Regarding This Solicitation

Please respond, in writing, no later than \_\_\_\_\_, any questions you have regarding this Solicitation. Written responses should be directed to Robert Ingram by email at ringram@chestercounty.org or by fax at 803-581-3527, or by mail at the above address.

**3.0 ADDITIONAL INFORMATION INQUIRIES**

**3.01 All inquiries concerning this RFP should be directed to:**

Robert J. Ingram,  
Director of Contracts and Procurement  
P.O. Drawer 580  
Chester, S.C., 29706  
(803) 581-2829 Fax (803) 581-3527

**III. ADMINISTRATIVE RULES FOR THE RFP**

**1.00 TERMINOLOGY**

**1.01 The terminology used and the organization of the RFP is not intended to be restrictive in any way. Appropriate interpretation of the intent of the RFP should be made by the offeror in these situations**

**2.00 AMENDMENTS**

**2.01 All amendments to and interpretations of this solicitation shall be in writing. Chester County shall not be legally bound by any amendment or interpretation that is not in writing. Only information supplied by the County in writing or in this RFP should be used in preparing offeror responses. All contacts that an offeror may have had before or after receipt of this RFP with any individuals, employees, or representatives of the County and any information that may have been read in any news media or seen or heard in any communication facility regarding this proposal should be disregarded in preparing responses.**

**3.00 DISCUSSIONS/NEGOTIATIONS**

**3.01 By submission of a proposal, offeror agrees that during the period following issuance of the RFP and prior to final award of contract, offeror shall not discuss this procurement with any party except the Director of Contracts and Procurement or other parties that may be designated in this solicitation. Offeror shall not attempt to discuss with or attempt to negotiate with the using \_\_\_\_\_ agency/department, any aspects of the procurement without prior approval of the Director of Contracts and Procurement.**

**4.0 PREPARATION OF PROPOSAL:**

**4.01 PROPOSAL FORMAT**

Your proposal should be in the following order:

- a. Name and contact information of person responsible for the proposal
- b. Proposal
- c. Compensation (in a separate sealed envelope)

- 4.02 All proposals should be complete and carefully worded and should convey all of the information requested by Chester County. If significant errors are found in the offeror's proposal, or if the proposal fails to conform to the essential requirements of the RFP, Chester County and Chester County alone will be the judge as to whether that variance is significant enough to reject the proposal.**
- 4.03 Proposals should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.**
- 4.04 Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume.**
- 4.05 If your proposal includes any comment over and above the specific information requested in our Request for Proposal, you are to include this information as a separate appendix to your proposal.**

- 4.06 Unless stated otherwise herein, the basic and governing language of the contract resulting from this solicitation shall be comprised of the RFP document, including any attachments and amendments, and the successful offeror's signed proposal. In the event of a conflict between the two documents, the RFP will govern.

**5.00 CORRECTIONS MADE BY OFFEROR**

- 5.01 Offerors are cautioned not to obliterate, erase, or strikeover any printed material as set forth in this Request for Proposal. In quoting prices, wherever Offeror has made an error and has corrected, any and all such corrections should be initialed by the person signing the proposal. Failure to comply with this provision may result in rejection of the proposal. All documents submitted must be legible.

**6.00 COUNTY RESPONSIBILITY TO PROPOSAL**

- 6.01 This Solicitation does not commit Chester County to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The County reserves the right to accept or reject any or all proposals received as a result of this request, or to cancel in part or in its entirety this proposal if it is in the best interest of the County to do so. If the proposal fails to conform to the essential requirements of the RFP, the County and the County alone will be the judge as to whether that variance is significant enough to consider the RFP non-responsive and therefore not considered for award.

**7.00 OFFERERS RESPONSIBILITIES**

- 7.01 Each Offeror shall carefully examine all RFP documents and thoroughly familiarize itself with all requirements prior to submitting a proposal. Should an Offeror find discrepancies, ambiguities, or omissions in proposal documents, or should the Offeror be in doubt as to their meaning, Offeror shall at once request written clarification from the Director of Contracts and Procurement. The person submitting the Proposal shall be responsible for its prompt delivery. Any interpretation or clarification of the proposal documents will be made in writing to all persons.
- 7.02 Before submitting a proposal, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this proposal. Failure to make such investigations and examinations shall not relieve the successful Offeror from the obligation to comply, in every detail, with all provisions and requirements of the request for proposal.
- 7.03 No proposal will be considered from any firm or individual that has failed to perform acceptably on any other contract with the County.
- 7.04 If the Offeror is a corporation, the proposal shall be signed in the name of and under the seal of the corporation by a duly authorized officer of the corporation with the designation of the signor's official capacity. The proposal shall show the state in which the corporation is chartered, and, if that state is other than South Carolina, the proposal shall show that the corporation is authorized to do business in the state of South Carolina. If the Offeror is a partnership, the proposal shall be signed in the name of the partnership by a general partner or other person who is duly authorized to bind the partnership. The signor's official capacity and authority shall be shown. If the Offeror is an individual or sole proprietorship, the proposal shall be signed by the individual in person, stating the name or style under which the Offeror is doing business. In any case, the proposal shall show the current business address of the Offeror, which is to be used for receiving communications from the County.

**8.00 WITHDRAWAL OF PROPOSALS**

- 8.01 A Offeror may withdraw his proposal without prejudice to himself not later than the day and hour set in the advertisement for receiving proposals, by communicating the purpose in writing to the Director of Contracts and Procurement, 140 Main Street, Chester, SC 29706. When received, said proposal surety, if applicable, will be returned to the Offeror unopened. Notification of withdrawal is the sole responsibility of the Offeror.

**9.00 MINIMUM QUALIFICATIONS:**

- 9.01 The County reserves the right to determine whether Offerors have the minimum qualifications to complete the project. The determination by the County concerning Offeror qualifications shall be final.

**10.00 REJECTION OF OFFERS**

- 10.01 More than one proposal from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Any or all proposals will be rejected if there is reason to believe that collusion exists among the Offerors and no participants in such collusion will be considered in future proposals for the same work. Proposals in which the prices obviously are unbalanced will be rejected.

**11.00 EVALUATION OF PROPOSALS**

- 11.01 An evaluation committee will be established in order to review and evaluate all proposals submitted in response to this Request for Proposal. The committee shall conduct a preliminary evaluation of all responsive technical proposals. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the Director of Contracts and Procurement to make oral presentations to the Evaluation Committee. This committee will then conduct a final evaluation of the offerors. The Contract and Procurement Director shall then negotiate a proposed contract with the highest qualified offeror. At the time the proposed contract is negotiated, the offeror and the Evaluation Committee may negotiate any changes desired in the Request for Proposal if deemed in the best interest of the County of Chester. If a satisfactory proposed contract cannot be negotiated with the highest qualified offeror, negotiations will be formally terminated. Negotiations shall then be undertaken with the second most qualified offeror and so on. The Committee will make appropriate recommendation to the Chester County Council prior to actual award of contract. In evaluating the proposals, the County reserves the right to accept or reject all or any part of any proposal, waive minor technicalities, and award the contract to the offeror deemed to best serve the interests of the County; and adopt any part or all of a proposal if it is judged in the best interests of the County.
- 11.02 Each proposal will be evaluated on the content of the offeror's proposal, i.e., the burden of information clarification and research rests solely on each offeror's effort and will be considered a reflection of interest and efficiency.
- 11.03 During the review process, the review panel shall have the right to request from offerors any other information or evidence which it deems necessary for evaluation of the proposal and relevant to any one or more of the stated evaluation factors. The failure of an offeror to promptly provide such requested information or evidence shall be sufficient grounds for determining the offeror to be non-responsive and for rejection of the proposal.
- 11.04 The County reserves the right to contact an offeror for clarification of information submitted, to contact references, and to use other sources of obtaining information regarding the offeror that is deemed appropriate and would assist in the evaluation.
- 11.05 Proposals, which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of the Request for Proposal, will be classified as "acceptable". Proposals found not to be acceptable will be classified, as "unacceptable" and no further discussion concerning it will be conducted.

**12.00 EVALUATION CRITERIA**

- 12.01 The County of Chester intends to award a contract resulting from this request for proposal to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the County taking into consideration price and other evaluation factors set forth herein; however, the right is specifically reserved to reject any and all proposals. Chester County shall be the sole judge of whether or not a proposal meets the requirements of this Request for Proposal.
- 12.02 Proposals will be reviewed and evaluated by the review panel based upon the evaluation factors, in addition to price, which are listed below:
1. Organizational Experience and Capabilities



- a. Background, experience and qualifications
- b. Financial Stability
- c. Organizational Management
- d. Personnel Qualifications
- 2. Technical Quality of Proposal
  - a. General Approach and understanding of project.
- 3. References
- 4. Price Factor (to be computed by Contracts and Procurement Director).

**13.00 DISCUSSIONS WITH RESPONSIVE OFFERORS:**

- 13.01 Discussions may be conducted with responsive offerors who submit proposals for the purpose of clarification to assure full understanding of the requirements of the request for proposals

**14.00 ORAL PRESENTATION**

- 14.01 Each offeror who submits a response to this Request for Proposal *may* be required to make an oral presentation of the submitted proposal to the County. Such presentations provide an opportunity for the offeror to clarify the proposal, to insure mutual understanding, and will in no way change the offeror's original proposal. Subsequent travel expense by the offeror will be at the offeror's expense.
- 14.02 Offerors are advised that, in the event of receipt of an adequate number of proposals, which in the opinion of the Director of Contracts and Procurement, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Hence, proposals should be submitted initially on the most complete and favorable terms from a technical standpoint which offerors are capable of submitting to the County. Should proposals submitted require additional clarification and/or supplementary information, offerors should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when so requested

**15.00 NOTIFICATION OF INTENT OR STATEMENT OF AWARD:**

- 15.01 In order to receive a copy of the Notification of Intent to Award or Statement of Award you must enclose a self addressed stamped envelope. Notification will not automatically be provided.

**16.00 UNSUCCESSFUL OFFERORS:**

- 16.01 Offerors not awarded a contract under this solicitation, may request return of their proposals within thirty (30) days after notification of award is mailed. All cost of return items will be paid by the offeror. If Federal Express, UPS, or other shipping number is not received, all materials will be destroyed.

**17.00 RIGHT TO PROTEST:**

- 17.01 Any prospective offeror or contractor, who is aggrieved in connection with the solicitation of a contract shall protest in writing to the Director of Contracts and Procurement within fifteen (15) days of the date of issuance of the Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue. Any actual offeror or contractor, who is aggrieved in connection with the intended award or award of a contract shall protest in writing to the Director of Contracts and Procurement within fifteen (15) days of the notification of intent to award or statement of award.

**IV. TERMS AND CONDITIONS**

**1.0 AFFIRMATIVE ACTION**

- 1.01 The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap. The following are incorporated herein by reference: 41 C.F.R. 60-1.4, 60-250.4 and 60-741-4.

**2.0 ASSIGNMENT**

- 2.01 No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Chester County Purchasing Office.

**3.0 CONTRACT AMENDMENTS**

- 3.01 Amendments to any contract between the agency and the contractor must be reviewed and approved by the Chester County Purchasing Office.

**4.00 COMPLIANCE WITH LAWS**

- 4.01.1 The Contractor shall keep fully informed of all existing and future State and Federal Laws and Municipal Ordinances and Regulations in any manner affecting those engaged or employed in the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the specifications for this work in relation to any such law, ordinance, regulation, order or decree, he shall forthwith report same to the Director of Contracts and Procurement, in writing. The Contractor shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders, and Decree's; and he shall protect and indemnify the County, its officers and agents, against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order or decree whether by themselves or their employees.

**5.00 FORCE MAJEURE:**

- 5.01 The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor and without excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

**6.00 INDEMNIFICATION**

- 6.01 The Contractor and any of its Subcontractors shall indemnify, defend, hold harmless and reimburse the County, its agents, officers and employees from and against any and all losses, liabilities, expenses, and all claims for damages of any nature whatsoever, relating to or arising out of any action or failure to act, by the Contractor, its subcontractors, officers, agents and employees, or relating to or arising out of the performance or failure to perform by the Contractor, its subcontractors, officers, agents and employees of any of the obligations under this Agreement. Losses, liabilities, expenses and claims for damages shall include, but not be limited to, civil and criminal fines and penalties, a taking, whether direct or indirect (inverse), loss of use and/or services, bodily injury, death, personal injury, or injury to real or personal property, defense costs, legal fees and costs and attorney's fees for an appeal.

**7.00 LEGAL OR CONSULTANT SERVICES:**

- 7.01 If this contract is for legal services, it is subject to the provisions of Section 11-9-105 of the 1976 Code of Laws of South Carolina as amended. "Any contract for legal or consultant services entered into by a state agency or institution shall include a provision which requires completion of all services. The Provision shall further require that in the event all services are not fully rendered as provided for in the contract, any Monies which have been paid by the agency under the contract must be refunded to the agency along with a twelve (12) percent penalty".

**8.00 PAYMENT FOR GOODS & SERVICES:**

- 8.01 Payment for goods and services received by the County will be processed in accordance with Section 11-35-45 of the South Carolina Procurement Code.

**9.00 PRIME CONTRACTOR RESPONSIBILITY:**

- 9.01 The contractor will be required to assume sole responsibility for the complete effort as required by this RFP. The County will consider the contractor to be the sole point of contact with regard to contractual matters

**10.00 RECORDS RETENTION & RIGHT TO AUDIT:**

- 10.01 The County shall have the right to audit the books and records of the contractor as they pertain to this contract, both independent of and pursuant to, S.C. Code Section 11-3220. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract. The County may conduct, or have conducted, performance audits of the contract or. The County may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the County. Pertaining to all audits, contractor shall make available to the County access to its computer files containing the history of contract performance and all other documents related to the audit. Additionally, any software used by the contractor shall be made available for auditing purposes at no cost to the County.

**11.00 SC LAW CLAUSE**

- 11.01 Upon award of a contract under this proposal, the person, partnership, association, or corporation to whom the award is made must comply with the laws of South Carolina, which require such person or entity to be authorized and/or licensed to do business in this State. Notwithstanding the fact that applicable statutes may exempt or exclude the successful offeror from requirements that it be authorized and/or licensed to do business in this State, by submission of this signed proposal, the offeror agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina, County of Chester, as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State.
- 11.02 The County shall promptly notify the Contractor of any civil or criminal actions filed against it or of any notice of violation from any federal or state agency or of any claim as soon as practical. The Contractor upon receipt of such notice shall have the right at its election to defend any and all actions or suits or join in the defense. Nothing herein shall be construed to prevent the County from defending its own interest.

**12.00 SUBCONTRACTING:**

- 12.01 If any part of the work covered by the RFP is to be subcontracted, the offeror shall identify the subcontracting organization and the contractual arrangements made therewith. All subcontractors must be approved by the County. The offeror will also furnish the corporate or company name and the names of the officers of any subcontractors engaged by the offeror.

**13.00 TERMINATION**

- 13.01 *For Cause:* In the event of material breach by Contractor, County shall give written notice specifying the material breach. County would regard any deviation from the requirements of the contract that was neither trivial nor innocent as being material. Such deviations are evaluated on an instance-by-instance basis but any deviation, which impairs the utilization or value of the property to the County, would be regarded by the County as a material breach. Upon receipt of such notice, if Contractor has not begun correction of the material breach within two (2) days or has not substantially corrected the material breach within ten (10) days of receipt of written notice, County shall have the right to terminate unilaterally and immediately services hereunder without further notice. County reserves the right to purchase any and all services or other items thereafter in the open market, charging the Contractor with any additional costs. Should such charge be assessed, no subsequent bids or proposals of the defaulting contractor will be considered until the assessed charge has been satisfied. Additionally, the County shall have a similar right of rescission in any instance where contractor provides or seeks to provide any services for a price higher than that specified herein, without regard to cause, including governmental regulatory intervention and insistence. In the event of rescission, revocation or termination, all documents and other materials in the possession of County or scheduled for delivery to County relating to performance hereunder shall become the property of County. County's failure to exercise their rights to terminate under this provision shall not be construed as a waiver of their rights to terminate, rescind or revoke the services herein in the event of any subsequent breach.

- 13.02 *Non-Appropriation:* If the Chester County Council fails to appropriate or authorize the expenditure of sufficient funds to provide the continuation of this contract or if a lawful order issued in, or for any fiscal year during the term of the contract, reduces the funds appropriated or authorized in such amounts as to preclude making the payments set out therein, the contract shall terminate on the date said funds are no longer available without any termination charges or other liability incurring to County.

**14.00 OFFEROR RESPONSIBILITY**

- 14.01 The Contractor shall provide all of the proposed work and services as finally agreed upon and accepted by the County of Chester. Each offeror shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this proposal. It is expected that this will sometimes require on-site observation. The failure or omission of an offeror to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this proposal or to the contract.

**15.00 OWNERSHIP OF MATERIAL**

- 15.01 All Proposals submitted in response to this document become the property of the County of Chester. Proposals submitted may be reviewed and evaluated by any person(s) at the discretion of the County upon award of contract. Ownership of all data, material and documentation originated and prepared for the County pursuant to this contract shall belong exclusively to the County. Offerors not awarded a contract under this solicitation, may request return of excess copies of their proposals within thirty (30) days after notification of award is mailed. All cost of returns will be paid by the offeror. If Federal Express, UPS, or other shipping number is not received with request, all excess copies will be destroyed.

**16.00 SOUTH CAROLINA SALES TAX:**

- 16.01 By submission of a signed bid/proposal, you are certifying, under penalties of perjury, that you comply with section 12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes. This will certify to the County your compliance.

**17.00 PROHIBITION OF GRATUITIES**

- 17.01 Section 8-13-420 of the 1976 Code of Laws of South Carolina states in part as follows: "Whoever gives or offers to any public official or public employee any compensation including a promise of future employment to influence his action, vote, opinion or judgment as a public official or public employee, or such public official solicits or accepts such compensation to influence his action, vote or judgment shall be subject to the punishment as provided by Sections 16-9-210 and 16-9-220. 'Gratuities in any form are strictly prohibited.

**V SCOPE OF WORK/SPECIFICATIONS**

**1.00 SCOPE OF WORK**

VI. CALENDAR OF EVENTS

|                                          |                                                                                      |
|------------------------------------------|--------------------------------------------------------------------------------------|
| SOLICITATION AVAILABLE TO VENDORS        | 2005                                                                                 |
| OFFEROR's QUESTIONS DUE                  | 2005                                                                                 |
| OFFEROR's QUESTIONS ANSWERED             | 2005                                                                                 |
| DEADLINE FOR RECEIPT OF OFFERS           | 2:00 p.m.<br>Chester County Procurement Office<br>140 Main Street, Chester, SC 29706 |
| HIGEST RANKED PROPOSAL SELECTED (If RFP) | TBD                                                                                  |
| PRESENTATION TO COUNCIL                  | TBD                                                                                  |

XII EXHIBITS

NON-COLLUSION AFFIDAVIT

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

\_\_\_\_\_, deposes and says that:

1. He/She is the \_\_\_\_\_ of offeror that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;
4. Neither the said Offeror nor any of its officers, partners, owners agents, representatives, employees or parties of interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Offeror, firm or person to submit a collusive sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposal in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Offeror, firm or person to fix the price or prices in the attached \_\_\_\_\_ proposal or of any other Offeror, or to fix any overhead, profit or cost element of the proposal price of any other Offeror or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of CHESTER or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspracy, connivance or unlawful agreement on the part of the Offeror or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Authorized Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Witnessed by me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Printed Name \_\_\_\_\_

CERTIFICATE OF FAMILIARITY

The undersigned, having fully familiarized himself with the information contained within this entire solicitation and applicable amendments, submits the attached bid and other applicable information to the County, which I verify to be true and correct to the best of my knowledge. I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, supplies or equipment, and is in all respects, fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid. *By submission of a signed bid, I certify, under penalties of perjury, that the below company complies with section 12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes.* I further certify that this bid is good for a period of ninety (90) days, unless otherwise stated.

\_\_\_\_\_  
Company Name as registered  
with the IRS

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Correspondence Address

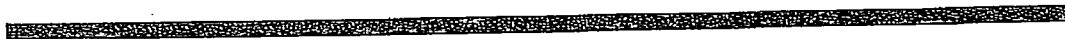
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number



---

REQUEST FOR WRITTEN RESPONSE TO QUESTIONS

---

TO: ROBERT J. INGRAM, DIRECTOR OF CONTRACTS AND PROCUREMENT

FAX: 803-581-3527

RFP No.

Deadline for submitting questions

OFFEROR NAME AND ADDRESS:

DATE:

CONTACT PERSON:

TELEPHONE #:

FAX #:

---

*(PLEASE REFER TO PAGE AND PARAGRAPH NUMBER WHEREVER POSSIBLE)*



SOLICITATION NUMBER:

PROCUREMENT:

**"NO RESPONSE" RESPONSE FORM**

To submit a **"No Response"** for this project, this form must be completed for your company to remain on our bidders list for commodities/services referenced. If you do not respond your name may be removed from this bidders list. In order to ensure that the County file has current information, or if you wish to be added to Chester County's Vendor Listing. You must also return the Certificate of Familiarity form completed in its entirety.

Note: Please show the solicitation number on the outside of the envelope.

Please check statement(s) applicable to your **"No Response"** --

- ☐ Specifications are restrictive; i.e. geared toward one brand or manufacturer only (explain below).
- ☐ Specifications are ambiguous (explain below).
- ☐ We are unable to meet specifications.
- ☐ Insufficient time to respond to the solicitation.
- ☐ Our schedule would not permit us to perform.
- ☐ We are unable to meet bond requirements.
- ☐ We are unable to meet insurance requirements.
- ☐ We do not offer this product or service.
- ☐ Remove us from your vendor list for this commodity/service.
- ☐ Other (specify below).

Comments:

\_\_\_\_\_  
Company Name (as registered with the IRS)

\_\_\_\_\_  
Correspondence Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Fax

\_\_\_\_\_  
Telephone

CCPP080

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|                                    |                |                             |
|------------------------------------|----------------|-----------------------------|
| Title: Uniform Solicitation Format |                | Policy #: PP-150            |
| INVITATION FOR BID (IFB)           |                | Submitted By: Robert Ingram |
|                                    |                | Approved By Robert Ingram   |
| Effective Date: 14 Apr 2005        | Supersedes No: | Page No.1 of 16             |

#### **I. PURPOSE:**

The purpose of this procedure is to describe the Chester County Governments policy for the Uniform Solicitation Format for Invitation For Bid.

#### **II. POLICY**

The Solicitation Parts labeled with a roman numeral will exist in every solicitation issued by the Chester County Purchasing Department. Regardless of what is being acquired or what type of solicitation is being used. If a Part has no contents, the header should be followed by "Intentionally Left Blank". Several Parts will contain subheadings that will also exist in every solicitation. Even though there is a format, flexibility is a key ingredient.

#### **III. ATTACHMENTS**

The following items should be added as attachments.

- a. BIDDERS SCHEDULE
- b. NON-COLLISION AFFIDAVIT
- c. CERTIFICATE OF FAMILIARITY
- d. REQUEST FOR WRITTEN RESPONSE TO QUESTIONS
- e. "NO RESPONSE" RESPONSE FORM

#### **IV. FORMAT**

CCPP081



Chester County, South Carolina

**INVITATION FOR BID**

Solicitation Number:

Description:

Using Governmental Unit:

Procurement Officer:

Issue Date:

**CLOSING DATE AND TIME:**

**PREBID MEETING:**

**CLOSING LOCATION:** Purchasing Department, Chester County  
Courthouse, 1st Floor, 140 Main Street, Chester SC

**Return Proposal To:** Chester County  
Office of Purchasing  
Phone: PO Drawer 680  
(803) 581-6268 Chester, SC 29706

**Express / Hand Carry To:** Chester County  
Office of Purchasing  
140 Main Street  
Chester, SC 29706

\*\*\* Solicitation Number and Opening Time must be shown on outside of sealed envelope \*\*\*

**NUMBER OF COPIES TO BE SUBMITTED:**

**PROCUREMENT FOR:**

The above solicitation number shall be shown on the front of the sealed envelope in which this solicitation response is submitted. Chester County assumes no responsibility for unmarked envelopes being considered for award. Only one (1) offer per envelope. Authorized company representative is required to sign in ink below on this page in the space provided. Any offer not signed will be automatically rejected. It is requested that completed offers be either typewritten or handwritten in black ink only. Facsimiles are not acceptable. If County offices are closed due to inclement weather, the solicitation response shall be opened at the same scheduled hour on the 3rd working day (excluding County observed holidays) after the scheduled solicitation opening date. Subject to the conditions, provisions and the enclosed information, sealed offers will be received at this office until the stated date and time and then publicly opened.

Robert J. Ingram  
Director of Contracts and Procurement

In compliance with the invitation to bid, and subject to all conditions thereof, the undersigned offers and agrees to furnish any or all items proposed.

|                      |  |            |                 |      |          |
|----------------------|--|------------|-----------------|------|----------|
| AUTHORIZED SIGNATURE |  | PRINT NAME |                 | DATE |          |
| COMPANY NAME         |  | PHONE      |                 | FAX  |          |
| MAILING ADDRESS      |  |            | STATE           |      | ZIP CODE |
| EMAIL ADDRESS        |  |            | FEDERAL TAX NO. |      |          |

CCPP082

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## SOLICITATION OUTLINE

- I. Scope of Solicitation
- II. Instructions to Offerors
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- IV. Terms and Conditions
- V. Bond Requirements
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May be Blank if Bidding Schedule / Cost Proposal Attached
- VII. Calendar of Events
- VIII. Exhibits

### I. SCOPE OF SOLICITATION

It is the intent of the County of Chester South Carolina, Purchasing Department to Solicit bids for \_\_\_\_\_ in accordance with all requirements stated herein.

### II. INSTRUCTIONS TO OFFERORS

#### General Instructions

#### 1.0 DEFINITIONS

- 1.01 Except as otherwise provided herein, the following definitions are applicable to all parts of the solicitation. For additional definitions see the terms and conditions below.
- 1. AMENDMENT – means a document issued to supplement the original solicitation document.
  - 2. COUNTY – means the County of Chester South Carolina.
  - 3. BUYER – means the Procurement Officer.
  - 4. COVER PAGE – means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the cover page.
  - 5. OFFER – means the bid or proposal submitted in response to this solicitation. The term "Bid" and "Proposal" are used interchangeably with the term "Offer."
  - 6. OFFEROR – means the single entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror." See bidding provisions entitled "Signing Your Offer" and "Bid/Proposal as Offer to Contract."
  - 7. PROCUREMENT OFFICER – means the person, or his successor, identified as such on the Cover Page.
  - 8. YOU and YOUR – means Offeror.
  - 9. SOLICITATION – means this document, including all its parts, attachments, and any Amendments.
  - 10. USING GOVERNMENTAL UNIT – means the Using Governmental Unit(s) identified on the Cover Page.
  - 11. SUBCONTRACTOR – means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

#### 2.0 COMPETITION

- 2.01 This solicitation is intended to promote competition. If any language, specifications, items and conditions, or any combination thereof restricts or limits the requirements in this solicitation to a single source, it shall be the responsibility of the interested vendor to notify the Purchasing Office in writing within five (5) days prior to the opening date. The solicitation may or may not be changed but a review of such notification will be made prior to the award.

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**3.0 COUNTY AS PROCUREMENT AGENT**

- 3.01** Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, The County Council Chairman, County Manager and the Contracts and Procurement Director are the only government officials authorized to bind the government with regard to this procurement. Purchasing Liability, the Procurement Officer is an employee of the County acting in behalf of the Using County Unit(s) pursuant to the County Procurement Code. Any contracts awarded as a result of this procurement are between the contractor and the Using County Unit(s). The Procurement Office is not a party to such contracts, unless and to the extent that the procurement office is a using county unit, and bears no liability for any party's losses arising out of relating in any way to the contract.

**4.0 ADMDMENTS TO SOLICITATION**

- 4.01** The solicitation may be amended at any time prior to opening. Bidders shall acknowledge receipt of any Amendment to this solicitation by signing and returning the Amendment, by letter, or by submitting a bid that indicates in some way that the bidder received the amendment. All amendments to and interpretations of this solicitation shall be in writing. Chester County shall not be legally bound by any amendment or interpretation that is not in writing. Only information supplied by the County in writing or in this IFB should be used in preparing offeror responses. All contacts that an offeror may have had before or after receipt of this IFB with any individuals, employees, or representatives of the County and any information that may have been read in any news media or seen or heard in any communication facility regarding this solicitation should be disregarded in preparing responses.

**5.0 BID / PROPOSAL AS OFFER TO CONTRACT**

- 5.01** By submitting Your Bid or Proposal, You are offering to enter into a contract with the using County Governmental Unit. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity: "joint bids" are not allowed.

**6.0 DUTY TO INQUIRE**

- 6.01** Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the County's attention.

**7.0 QUESTIONS FROM OFFERORS**

- 7.01** Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. The County seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

**8.00 DISCUSSIONS/NEGOTIATIONS**

- 8.01** By submission of an Offer, offeror agrees that during the period following issuance of the IFB and prior to final award of contract, offeror shall not discuss this procurement with any party except the Director of Contracts and Procurement or other parties that may be designated in this solicitation. Offeror shall not attempt to discuss with or attempt to negotiate with the using agency/department, any aspects of the procurement without prior approval of the Director of Contracts and Procurement.

**9.00 PROPRIETARY/CONFIDENTIAL INFORMATION**

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9.01 Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Freedom of Information Act; however, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state reasons why protection is necessary. Disposition of material after award is made should be stated by the offeror. No information, materials or other documents relating to this procurement will be presented or made otherwise available to any other person, agency, or organization until after award.

9.02 All offerors must visibly mark as "Confidential" each part of their proposal, which they consider to contain proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section §11-35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute are:

- (1) Customer lists;
- (2) Design recommendations and identification of prospective problem areas under an IFB
- (3) Design concepts, including methods and procedures;
- (4) Biographical data on key employees of the offeror.

**MARKING YOUR ENTIRE PROPOSAL CONFIDENTIAL/PROPRIETARY IS NOT IN CONFORMANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT.**

**10.0 OMIT TAXES FROM PRICE**

10.01 Do not include any taxes in Your price the County may be required to pay, unless specifically called for in the Solicitation,

**11.0 SIGNING YOUR OFFER**

11.01 Every Offer must be signed by an individual with actual authority to bind the Offer.

11.02 If the Offeror is an individual, the offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.

11.03 If the Offeror is a partnership, the Offer must be submitted in the partnership names, followed by the words "by its Partner," and signed by a general partner.

11.04 If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.

11.05 An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs 16.02 through 16.04 above for each type of participant.

11.06 If an Offer is signed by an agent, other than as stated in subparagraphs 16.02 through 16.05 above the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

**12.00 SUBMITTING YOUR OFFER OR MODIFICATIONS**

12.01 Offers and offer modifications shall be submitted in sealed envelopes or packages:

- (1) Addressed to the office specified in the Solicitation;
- (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder.

CCPP087



12.02 Each Offeror must submit the number of copies indicated on the Cover Page.

12.03 Offerors using commercial carrier service shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs 18.01 (1) and 18.01 (2) of this provision when delivered to the office specified in the Solicitation.

12.04 Facsimile Offers, modifications, or with draws, will not be considered unless authorized by the solicitation.

*Any proposals received after the scheduled deadline, will be immediately disqualified. The County assumes no responsibility for delivery of proposals, which are mailed.*

ALL MAIL IS PICKED UP FROM THE US POSTAL SERVICE ONCE DAILY AROUND 9:30 AM (EXCLUDING WEEK-ENDS AND HOLIDAYS).

**13.0 DEADLINE FOR SUBMISSION OF OFFER**

13.01 Any offer received after the procurement officer of the County or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the county mail room which services the purchasing office prior to bid opening.

**14.0 PUBLIC OPENING**

14.01 Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last amendment, whichever is applicable. Bids received one minute after the closing time will not be accepted. Bids will be opened read and tabulated at that time.

**15.0 RESPONSIVENESS / IMPROPER OFFERS**

15.01 Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

15.02 Multiple Offers. Offers may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. While multiple Offers may be submitted, each must be submitted separately.

15.03 Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as non-responsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the County cannot be determined. Offerors will not be given an opportunity to correct any material non-conformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [§11-35-1520 (13)]

15.04 Unbalanced Bidding. The County may reject an Offer as non-responsive if the prices bid are materially unbalanced between line items or sub-line items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the County even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

**16.0 AWARD**

16.01 The award of the bid is conditional not only upon the price of the bid but also upon the qualifications of the offeror and the offeror's ability to complete the project within the time frame. It is the intent of the County to award these projects to the lowest, most responsive, responsible bidder considering the combined sum total for all projects. Considering budget restraints, it is possible that sufficient funds may not be available for all projects. Therefore, the County reserves the right to negotiate with the most responsive offeror, and award as many projects as possible. The award can be made to one or a multiple of vendors, whichever is in the best interest of the County, or unless otherwise stated on bidder's schedule. All ties will be resolved by the flip of a coin.

CCPP088

17.0 **AWARD NOTIFICATION**

17.01 Notice regarding the County's intent to award a contract will be posted in the County Purchasing Office. The date and location of posting will be announced at opening. A bidder that requires a copy of the award notification must supply a self-addressed, stamped envelope.

18.0 **PROTESTS**

18.01 Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest in writing within fifteen (15) days of the date of issue of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the Intended award or award of contract shall protest within fifteen (15) days of the date notification of award is posted in accordance with this code. A protest shall be in writing, submitted to the Contracts and Procurement Director, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided (§11-35-4210) Direct all correspondence to Director Contracts and Procurement, P. O Box 580, Chester South Carolina, 29706.

**B Special Instructions**

1.00 **SUBMISSIONS OF QUESTIONS**

1.01 **Primary Contact for Questions Regarding This Solicitation**

Please respond, in writing, no later than \_\_\_\_\_, any questions you have regarding this Solicitation. Written responses should be directed to Robert Ingram by email at [ringram@chestercounty.org](mailto:ringram@chestercounty.org) or by fax at 803-581-3527, or by mail at the above address.

2.0 **ADDITIONAL INFORMATION INQUIRIES**

2.01 All inquiries concerning this IFB should be directed to:

Director of Contracts and Procurement  
P.O. Drawer 580  
Chester, S.C., 29706  
(803) 581-2829 Fax (803) 581-3527

3.0 **PRE-BID: CONFERENCE**

**USE ONE OF THE FOLLOWING**

\*\*\*\*\*

**PRE-BID CONFERENCE – MANDATORY**

There will be a mandatory pre-bid conference at \_\_\_\_ M on \_\_\_\_\_ at the \_\_\_\_\_. Questions concerning the contents of the project and procedural aspects of the IFB will be answered at this time.

**NOTE:** Attendance at the pre-bid conference is a prerequisite to submitting a bid.

Any questions or requests for information must be submitted in writing prior to the adjournment of the Pre-Bid Conference. Questions may be mailed to the conference. Any written questions received prior to during or after the conference will be responded to in the form of a written amendment to the IFB and mailed, faxed or e-mailed to all offerors who attend the conference. Any questions not answered during the conference will also be responded to in writing and mailed, faxed or e-mailed to all offerors in attendance at the conference.

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**PRE-BID CONFERENCE**

There will be a pre-bid conference at \_\_\_\_ M on \_\_\_\_\_ at the \_\_\_\_\_. Questions concerning the contents of the project and procedural aspects of the IFB will be answered at this time. All offerors are encouraged to attend.

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Any questions or requests for information must be submitted in writing prior to the adjournment of the Pre-Bid Conference. Questions may be mailed to the conference. Any written questions received prior to during or after the conference will be responded to in the form of a written amendment to the IFB and mailed, faxed or e-mailed to all offerors who attend the conference. Any questions not answered during the conference will also be responded to in writing and mailed, faxed or e-mailed to all offerors in attendance at the conference.

.....

**PRE-BID CONFERENCE – NOT REQUIRED**

.....

**III. ADMINISTRATIVE RULES FOR THE IFB**

**1.00 TERMINOLOGY**

- 1.01 The terminology used and the organization of the IFB is not intended to be restrictive in any way. Appropriate interpretation of the intent of the IFB should be made by the offeror in these situations.

**2.0 PREPARATION OF BID:**

- 2.01 Each proposer should carefully examine the IFB documents, including any amendments. Should an Offeror find discrepancies, ambiguities, or omissions in the solicitation documents, or should the Offeror be in doubt as to their meaning, Offeror shall at once request written clarification from the Director of Contracts and Procurement. No allowance will be made for oversight or misunderstandings by the proposer after bids are received. The failure or omission of a bidder to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this bid or to the contract. If significant errors are found in the offerors bid, or if the bid fails to conform to the essential requirements of the IFB, Chester County and Chester County alone will be the judge as to whether that variance is significant enough to reject the bid.
- 2.02 If specifications or description papers are submitted with proposal, enter bidder's name thereon.
- 2.03 When required, furnish samples, free of expense, prior to the opening of bids. Label each sample with bidder's name and the item number. Should you wish the sample returned at your expense, when not damaged by review, make requests to return within 10 working days following opening of bids.
- 2.04 Failure to submit correct bid guarantee and all required forms will result in rejection of your bid.
- 2.05 Unless stated otherwise herein, the basic and governing language of the contract resulting from this solicitation shall be comprised of the IFB document, including any attachments and amendments, and the successful offeror's signed proposal. In the event of a conflict between the two documents, the IFB will govern.
- 2.06 All bid prices submitted shall remain in effect for a minimum period of ninety (90) days, unless otherwise stated.
- 2.07 Submit one (1) signed original of the bid unless otherwise stated.
- 2.08 Submit your signed bid on the bidder's schedule provided.
- 2.09 Enter the manufacturer, brand, and model/catalog number, as applicable, and your bid price in the space provided on the bidder schedule. Additional pages may be attached, when applicable, for alternates, etc.

**3.00 DEVIATIONS FROM SPECIFICATIONS**

- 3.01 Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications and successful bidder will be held responsible. Deviations must be explained in detail on separate attached sheet(s). The listing of deviations, if any, is required but will not be construed as waiving any requirements of the specifications. Deviations found in the evaluation of the bid and not listed may be cause for rejection. Bidders offering substitute or equal items must provide information sufficient enough to determine acceptability of item offered.

**4.00 CORRECTIONS MADE BY OFFEROR**

- 4.01 Offerors are cautioned not to obliterate, erase, or strikeover any printed material as set forth in this

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Invitation For Bid. In quoting prices, wherever Offeror has made an error and has corrected, any and all such corrections should be initialed by the person signing the Offer. Failure to comply with this provision may result in rejection of the Offer. All documents submitted must be legible.

**5.00 COUNTY RESPONSIBILITY TO SOLICITATION**

- 5.01 This Solicitation does not commit Chester County to award a contract, to pay any costs incurred in the preparation of an Offer, or to procure or contract for the articles of goods or services. The County reserves the right to accept or reject any or all bids received as a result of this request, to waive any technicality, or to cancel in part or in its entirety this bid if it is in the best interest of the County to do so. If the bid fails to conform to the essential requirements of the IFB, the County and the County alone will be the judge as to whether that variance is significant enough to consider the IFB non-responsive and therefore not considered for award

**6.00 OFFERERS RESPONSIBILITIES**

- 6.01 Before submitting an Offer, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this solicitation. Failure to make such investigations and examinations shall not relieve the successful Offeror from the obligation to comply, in every detail, with all provisions and requirements of this solicitation or to the contract.
- 6.02 The Contractor shall provide all of the proposed work and services as finally agreed upon and accepted by the County of Chester. Each offeror shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this solicitation. It is expected that this will sometimes require on-site observation.
- 6.03 No Offer will be considered from any firm or individual that has failed to perform acceptably on any other contract with the County.
- 6.04 If the Offeror is a corporation, the Offer shall be signed in the name of and under the seal of the corporation by a duly authorized officer of the corporation with the designation of the signor's official capacity. The Offer shall show the state in which the corporation is chartered, and, if that state is other than South Carolina, the Offer shall show that the corporation is authorized to do business in the state of South Carolina. If the Offeror is a partnership, the Offer shall be signed in the name of the partnership by a general partner or other person who is duly authorized to bind the partnership. The signor's official capacity and authority shall be shown. If the Offeror is an individual or sole proprietorship, the Offer shall be signed by the individual in person, stating the name or style under which the Offeror is doing business. In any case, the Offer shall show the current business address of the Offeror, which is to be used for receiving communications from the County.

**7.00 WITHDRAWAL OF OFFERS**

- 7.01 A Offeror may withdraw his Offer without prejudice to himself not later than the day and hour set in the advertisement for receiving Offers, by communicating the purpose in writing to the Director of Contracts and Procurement, 140 Main Street, Chester, SC 29706. When received, said bid surety, if applicable, will be returned to the Offeror unopened. Notification of withdrawal is the sole responsibility of the Offeror.

**8.00 MINIMUM QUALIFICATIONS:**

- 8.01 The County reserves the right to determine whether Offeror(s) have the minimum qualifications to supply the goods/services requested. The determination by the County concerning Offeror qualifications shall be final.

**9.00 EVALUATION OF OFFERS**

- 9.01 All bids will be evaluated as to completeness and the qualification of bidder.

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**10.00 EVALUATION CRITERIA**

10.01 The County of Chester intends to award a contract resulting from this Invitation for Bid to the most responsive and responsible offeror whose Offer is determined to be the most advantageous to the County. Lowest price from the responsive bidders will be the primary consideration; however, the right is specifically reserved to reject any and all Offers. Chester County shall be the sole judge of whether or not an Offer meets the requirements of this IFB.

10.02 Offers will be reviewed and based upon the evaluation factors. In addition to price, the items listed below will aid in determination of a bidder either being responsive or non-responsive;

- (1) Bidders Qualifications; Contractor must have licensed as general and commercial contractor in the State of South Carolina. Bidders must upon request by the county, furnish satisfactory evidence of their ability to furnish products or services in accordance with the Terms and Conditions of these specifications. The County reserves the right to make the final determination as to the bidder's ability to provide the products or services requested herein. Bid requirements on the equipment specified are not intended to be restrictive to potential bidders but indicate the required features for satisfactory performance. Chester County will determine if minor deviations from these features are acceptable.
- (2) Bidders shall provide a list of at least three (3) similar projects performed by the contractor, preferably within 200 miles of Chester, South Carolina. Credentials and a list of references shall also be included.

**11.00 DISQUALIFICATIONS OF OFFERORS**

11.01 More than one Offer from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Any or all Offers will be rejected if there is reason to believe that collusion exists among the Offerors and no participants in such collusion will be considered in future solicitations for the same work. Offers in which the prices obviously are unbalanced will be rejected.

**12.0 LUMP SUM TOTAL:**

12.01 Lump sum total bid as submitted shall encompass all Contractor costs, incidental or otherwise, for providing and accomplishing the total work requirements as specified, complete and in accordance with the plans, specifications and the conditions and requirements of the contract and bidding documents.

**13.00 PROHIBITION OF GRATUITIES**

13.01 Section §8-13-420 of the 1976 Code of Laws of South Carolina states in part as follows: "Whoever gives or offers to any public official or public employee any compensation including a promise of future employment to influence his action, vote, opinion or judgment as a public official or public employee, or such public official solicits or accepts such compensation to influence his action, vote or judgment shall be subject to the punishment as provided by Sections §16-9-210 and §16-9-220. "Gratuities in any form are strictly prohibited."

**IV. TERMS AND CONDITIONS**

**1.0 AFFIRMATIVE ACTION**

1.01 The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap. The following are incorporated herein by reference: 41 C.F.R. 60-1.4, 60-250.4 and 60-741-4.

**2.0 ASSIGNMENT**

2.01 No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Chester County Purchasing Office.

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**3.0 CONTRACT AMENDMENTS**

- 3.01 Amendments to any contract between the agency and the contractor must be reviewed and approved, in writing, by the Chester County Purchasing Office.

**4.00 COMPLIANCE WITH LAWS**

- 4.01.1 The Contractor shall keep fully informed of all existing and future State and Federal Laws and Municipal Ordinances and Regulations in any manner affecting those engaged or employed in the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the specifications for this work in relation to any such law, ordinance, regulation, order or decree, he shall forthwith report same to the Director of Contracts and Procurement, in writing. The Contractor shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders, and Decree's; and he shall protect and indemnify the County, its officers and agents, against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order or decree whether by themselves or their employees.

**5.00 FORCE MAJEURE:**

- 5.01 The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor and without excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

**6.00 INDEMNIFICATION**

- 6.01 The Contractor and any of its Subcontractors shall indemnify, defend, hold harmless and reimburse the County, its agents, officers and employees from and against any and all losses, liabilities, expenses, and all claims for damages of any nature whatsoever, relating to or arising out of any action or failure to act, by the Contractor, its subcontractors, officers, agents and employees, or relating to or arising out of the performance or failure to perform by the Contractor, its subcontractors, officers, agents and employees of any of the obligations under this Agreement. Losses, liabilities, expenses and claims for damages shall include, but not be limited to, civil and criminal fines and penalties, a taking, whether direct or indirect (inverse), loss of use and/or services, bodily injury, death, personal injury, or injury to real or personal property, defense costs, legal fees and costs and attorney's fees for an appeal.

**7.00 LEGAL OR CONSULTANT SERVICES:**

- 7.01 If this contract is for legal services, it is subject to the provisions of Section §11-9-105 of the 1976 Code of Laws of South Carolina as amended. "Any contract for legal or consultant services entered into by a state agency or institution shall include a provision which requires completion of all services. The Provision shall further require that in the event all services are not fully rendered as provided for in the contract, any monies which have been paid by the agency under the contract must be refunded to the agency along with a twelve (12) percent penalty".

**8.00 PAYMENT FOR GOODS & SERVICES:**

- 8.01 Payment for goods and services received by the County will be processed in accordance with Section §11-35-45 of the South Carolina Procurement Code.
- 8.02 Progress Payments, if required and approved, can be made available for this project.

**9.00 PRIME CONTRACTOR RESPONSIBILITY:**

- 9.01 The contractor will be required to assume sole responsibility for the complete effort as required by this IFB. The County will consider the contractor to be the sole point of contact with regard to contractual matters

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**10.00 RECORDS RETENTION & RIGHT TO AUDIT:**

- 10.01** The County shall have the right to audit the books and records of the contractor as they pertain to this contract, both independent of and pursuant to, S.C. Code Section §11-3220. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract. The County may conduct, or have conducted, performance audits of the contract or. The County may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the County. Pertaining to all audits, contractor shall make available to the County access to its computer files containing the history of contract performance and all other documents related to the audit. Additionally, any software used by the contractor shall be made available for auditing purposes a no cost to the County.

**11.00 SC LAW CLAUSE**

- 11.01** Upon award of a contract under this proposal, the person, partnership, association, or corporation to whom the award is made must comply with the laws of South Carolina, which require such person or entity to be authorized and/or licensed to do business in this State. Notwithstanding the fact that applicable statutes may exempt or exclude the successful offeror from requirements that it be authorized and/or licensed to do business in this State, by submission of this signed proposal, the offeror agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina, County of Chester, as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State.
- 11.02** The County shall promptly notify the Contractor of any civil or criminal actions filed against it or of any notice of violation from any federal or state agency or of any claim as soon as practical. The Contractor upon receipt of such notice shall have the right at its election to defend any and all actions or suits or join in the defense. Nothing herein shall be construed to prevent the County from defending its own interest.

**12.00 SUBCONTRACTING:**

- 12.01** If any part of the work covered by the IFB is to be subcontracted, the offeror shall identify the subcontracting organization and the contractual arrangements made therewith. All subcontractors must be approved by the County. The offeror will also furnish the corporate or company name and the names of the officers of any subcontractors engaged by the offeror.

**13.00 TERMINATION**

- 13.01** *For Cause:* In the event of material breach by Contractor, County shall give written notice specifying the material breach. County would regard any deviation from the requirements of the contract that was neither trivial nor innocent as being material. Such deviations are evaluated on an instance-by-instance basis but any deviation, which impairs the utilization or value of the property to the County, would be regarded by the County as a material breach. Upon receipt of such notice, if Contractor has not begun correction of the material breach within two (2) days or has not substantially corrected the material breach within ten (10) days of receipt of written notice, County shall have the right to terminate unilaterally and immediately services hereunder without further notice. County reserves the right to purchase any and all services or other items thereafter in the open market, charging the Contractor with any additional costs. Should such charge be assessed, no subsequent bids or proposals of the defaulting contractor will be considered until the assessed charge has been satisfied. Additionally, the County shall have a similar right of rescission in any instance where contractor provides or seeks to provide any services for a price higher than that specified herein, without regard to cause, including governmental regulatory intervention and insistence. In the event of rescission, revocation or termination, all documents and other materials in the possession of County or scheduled for delivery to County relating to performance hereunder shall become the property of County. County's failure to exercise their rights to terminate under this provision shall not be construed as a waiver of their rights to terminate, rescind or revoke the services herein in the event of any subsequent breach.
- 13.02** *Non-Appropriation:* If the Chester County Council fails to appropriate or authorize the expenditure of sufficient funds to provide the continuation of this contract or if a lawful order issued in, or for any fiscal year during the term of the contract, reduces the funds appropriated or authorized in such amounts as to preclude making the payments set out therein, the contract shall terminate on the date said funds are no longer available without any termination charges or other liability incurring to County.

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**14.00 OWNERSHIP OF MATERIAL**

14.01 All Proposals submitted in response to this document become the property of the County of Chester. Offers submitted may be reviewed and evaluated by any person(s) at the discretion of the County upon award of contract. Ownership of all data, material and documentation originated and prepared for the County pursuant to this contract shall belong exclusively to the County. Offerors not awarded a contract under this solicitation, may request return of excess copies of their Offers within thirty (30) days after notification of award is mailed. All cost of returns will be paid by the offeror. If Federal Express, UPS, or other shipping number is not received with request, all excess copies will be destroyed.

**15.00 SOUTH CAROLINA SALES TAX:**

15.01 By submission of a signed Bid/Offer, you are certifying, under penalties of perjury, that you comply with section §12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes. This will certify to the County your compliance.

**16.0 UNIT PRICES**

16.01 Unit prices will govern over extended prices unless otherwise stated in this bid.

**17.0 QUALITY OF PRODUCT**

17.01 Unless otherwise indicated in this bid it is understood and agreed that any items offered or shipped on this bid shall be new and in first class condition.

**18.0 WAIVER**

18.01 The County reserves the right to waive any Instructions to Bidders, General or Special Provisions, General or Special Conditions, or specifications deviation if deemed in the best interest of the County.

**19.0 DEFAULT**

19.01 In case of default by the contractor, the County reserves the right to purchase any or all items in default in the open market, charging the contractor with any excessive cost. Should such charge be assessed, no subsequent bids of the defaulting contractor will be considered until the assessed charge has been satisfied.

**20.0 PUBLICITY RELEASES**

20.01 Contractor agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the user. The contractor shall not have the right to include the County's name in its published list of customers without prior approval by the County. With regard to news releases, only the name of the County, type and duration of contract may be used and then only with prior approval of the County. The contractor also agrees not to publish, or cite in any form, any comments or quotes from the County Staff.

**V. BOND REQUIREMENTS**

**1.0 PERFORMANCE SURETY**

1.01 The successful contractor must furnish within ten (10) days after written notice of acceptance of Bid, a Performance Bond, Certificate of Deposit, Cashier's Check or irrevocable letter of credit.

(1) **PERFORMANCE BOND:** The successful contractor shall provide and pay the costs of a Performance Bond and it shall be issued in the amount of 100% of amount of contract. Bond must be issued by a Surety Company licensed to do business in South Carolina, with an "A" minimum rating of performance as stated in the most current publication of "Best's Key Rating Guide, Property Liability" which shall show a financial strength rating of at least five (5) times the contract price. Each bond shall be accompanied by a Power of Attorney, authorizing the attorney-in-fact to bind the surety and certified to include the date of the bond.

(2) **CERTIFIED CHECK:** Equal to 100% of the contract to be retained by Chester County until satisfactory

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- completion of the contract.
- (3) IRREVOCABLE LETTER OF CREDIT: Shall be issued by a Financial Institution Insured by the FDIC or FSLIC in the amount of 100% of contract amount.

## **VI. SCOPE OF WORK/SPECIFICATIONS**

### **1.00 SPECIFICATIONS**

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## **VII. CALENDAR OF EVENTS**

|                                          |                                                                                             |
|------------------------------------------|---------------------------------------------------------------------------------------------|
| SOLICITATION AVAILABLE TO VENDORS        | , 2005                                                                                      |
| OFFEROR's QUESTIONS DUE                  | , 2005                                                                                      |
| OFFEROR's QUESTIONS ANSWERED             | , 2005                                                                                      |
| DEADLINE FOR RECEIPT OF OFFERS           | 2:00 p.m. , 2005<br>Chester County Procurement Office<br>140 Main Street, Chester, SC 29706 |
| HIGEST RANKED PROPOSAL SELECTED (If RFP) | TBD                                                                                         |
| PRESENTATION TO COUNCIL                  | TBD                                                                                         |

## **VIII. EXHIBITS**

CCPP097



Chester County, South Carolina

**BIDDERS SCHEDULE**

Solicitation Number:

Description:

Using Governmental Unit:

Procurement Officer:

Issue Date:

OPENING DATE AND TIME: Tuesday, 2005 @ 2:00 pm

OPENING LOCATION: Purchasing Department, Chester County  
Courthouse, 1st Floor, 140 Main Street, Chester, SC., 29706

Return Proposal To: Chester County  
Office of Purchasing  
Phone: PO Drawer 580  
(803) 581-6268 Chester, SC., 29706

Express / Hand Carry To: Chester County  
Office of Purchasing  
140 Main Street  
Chester, SC., 29706

\*\*\* Solicitation Number and Opening Time must be shown on outside of sealed envelope \*\*\*

NUMBER OF COPIES TO BE SUBMITTED:

PROCUREMENT FOR:

PROJECT COST \_\_\_\_\_

TAX (IF Applicable) \_\_\_\_\_

LUMP SUM TOTAL: \_\_\_\_\_

BIDDER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

CCPP098

|                                                                |                |                     |
|----------------------------------------------------------------|----------------|---------------------|
| Title:                                                         |                | Procedure #: PP-160 |
| Purchasing Procedure Manual - Filing of RFP's, IFB's and RFQ's |                | Submitted By:       |
|                                                                |                | Approved By         |
| Effective Date: 1 May 2005                                     | Supersedes No: | Page No. 1 of 1     |

#### I. PURPOSE

To define procedures for filing of documents pertaining to RFP's, IFB's and RFQ's, so that all formal solicitation files are uniform.

#### II. SCOPE

This procedure applies to all formal solicitations.

#### III. PROCEDURE

Use a Gussco, 3 compartment Multi-Folder, part number 59-702; Blue, 59-704, Green; 59-706, Canary; 59-707, Red; or equivalent. (different color for each year).

- A. Inside front cover - Solicitation.
- B. Outside 2nd - Specifications used.
- C. Inside 2nd flap - Advertising Information
- D. Outside 3<sup>rd</sup> Flap - Bidders List
- E. Inside 3<sup>rd</sup> flap - Solicitation Results (questions, quotes, evaluations)
- F. Outside 4<sup>th</sup> flap - Contract File

CCPP099

|                                                                     |                         |
|---------------------------------------------------------------------|-------------------------|
| Title:<br><br>Purchasing Procedure Manual - Contract Administration | Procedure #: PP-170     |
|                                                                     | Submitted By: R. Ingram |
|                                                                     | Approved By R. Ingram   |
| Effective Date: 1 May 2005                                          | Supersedes No:          |
| Page No. 1 of 28                                                    |                         |

**IMPORTANT NOTICE** Any Guideline or procedure of broad application CANNOT address the needs of all possible situations. For this reason, this document is intended to be a general guide and NOT a county policy. Procurement personnel in the County are to exercise their judgement in the application of the process described herein and are expected to modify, omit, or add steps depending on the particular circumstances.

Contractors are NOT entitled to rely on, or to expect adherence to, the guidelines or processes outlined in this document. Moreover, this document should NOT be construed as obligating the County in any way to follow the guidelines or procedures outlined herein. This document is NOT part of any contract document and is NOT intended to create any contractual obligations.

The definitions and statements contained herein are NOT an official interpretation of the Procurement Code and are intended only for use as a part of this document.

#### DEFINITIONS

**Buyer:** Procurement personnel responsible for the procurement (either awards the contract, or is designated as the point of contact). Purchasing personnel with titles ranging from Buyer to Procurement Director may be filling this role.

**Buyer's Review of Contractor's Response:** Formal documentation of the Buyer's review of a Contractor's response to a "Contractor's Performance Report." It may be used to accept the Contractor's response, further negotiate with the Contractor, or as part of the justification to terminate a contract. Its intended purpose is to formally establish agreement of a resolution between the parties involved.

**Change Order:** (as defined in SC Law § 11-35-310 item 4): "Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished any mutual agreement of the parties to the contract." An amendment issued prior to final award is not a Change Order.

**Chief Procurement Officer (CPO):** The Contract and Procurement Director for the County.

**Contract Administrator:** Assigned the function of monitoring contract performance. Unless designated otherwise, the Buyer performs this role. However, it is anticipated that this role may be delegated to personnel assigned to the operational area receiving the goods or services. The person to fulfill this function is designated by the Buyer. The "Contract Administrator Designation Letter", should clearly identify the administrator and his scope of authority.

**"Contract Administration Designation Letter":** Letter issued by the Buyers formally designating who will be performing contract administration duties and their scope of authority.

**"Contract Administration Plan":** Plan developed during "Pre-Award" phase and adjusted as needed during the "Post-Award" phase of the contract. It describes how the county will approach contract administration. Also

|                                                                     |                |                  |
|---------------------------------------------------------------------|----------------|------------------|
| Title:<br><br>Purchasing Procedure Manual – Contract Administration |                | Procedure #:     |
|                                                                     |                | Submitted By:    |
|                                                                     |                | Approved By:     |
| Effective Date:                                                     | Supersedes No: | Page No. 2 of 28 |

used when developing contract documents to ensure they have effective and enforceable provisions, which produce desired outcomes.

**Contract and Procurement Director:** Chief Procurement Officer for the County.

**Contract Controversy:** Generally, a dispute between the County and a Contractor in regards to the performance or interpretation of a contract. A "Request for Resolution" of a "Contract Controversy" invokes the CPO's authority under § 11-35-4230 to conduct an administrative review and resolve the controversy. This process is used when the Contractor and the County cannot reconcile differences at a lower level than a Chief Procurement Officer. While this process is a last resort it is not necessary to wait and use it only when a contract is being terminated. It may be used effectively at any point during the life of the contract to address an issue that must be resolved before the contract can be completed. "Contract Controversy" proceedings may be initiated by the County or the Contractor. The CPO (Procurement Director) presides over the process.

**Contract Modification (as defined in SC Law § 11-35-310 Item 9):** "A written order signed by the procurement officer, directing the contractor to make changes which the "Change Clause" of the contract authorizes the procurement officer to order without the consent of the contractor."

**Contractor (as defined in SC Law § 11-35-310 Item 10):** "Any person having a contract with governmental body."

**"Contractor Performance Report":** Report used to provide feedback concerning Contractor performance. It consists of a cover page and 1 of 3 letter formats to be used at the Buyer's discretion. The "OPEN FORMAT" is used to report exceptionally good performance or non-performance that does not yet warrant a "Cure" or "Show Cause" format. It is appropriate tool to use when a Contractor has substantially performed, but there are minor non-performance issues that have NOT been successfully resolved informally. This format is not appropriate for issues that are serious enough (on their own merit) to result in contract termination. The "CURE FORMAT" Provides notification to the Contractor that, based on the County's observations, it appears the contractor is not going to perform per the terms and conditions of the contract. This report is used there is still sufficient time remaining for the Contractor to perform per the terms and conditions of the contract. It is an excellent approach to motivate Contractors to catch-up and stay on schedule when a milestone has been missed. The "SHOW CAUSE FORMAT" provides notification to the Contractor that he has failed to perform and is now in default. This report is used when there is NOT sufficient time remaining for the Contractor to perform per the terms and conditions of the contract and the County plans to "Terminate for Cause" unless the Contractor has a legally valid excuse for its failure to perform.

**Partnering:** An ongoing process initiated at the beginning of the performance phase of a contract. It encourages both County and Contractor personnel to work together to achieve the contract objectives. It involves the development of a cooperative management team, representing both parties, which seeks to identify common goals and objectives. Stated another way, it is a process of aligning expectations.

**Perfect Performance (also called "Strict" or Literal" performance in some references and "Perfect Tender" in others):** All terms and conditions are performed exactly as specified in the contract documents.

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Any non-performance issue is resolved per the terms and conditions of the contract prior to its completion. When provided for in the contract, "Perfect" or "Near Perfect" performance may be required. When this is the case, the performance standards should be made clear and emphasized in the contract documents. Buyers are cautioned to use these performance level standards sparingly. Their use may be interpreted as restrictive and unreasonable. "Perfect Performance" requirements may drive prices upward and cause unnecessary problems for all parties during the post award phase of the contract.

**Substantial Performance:** Exists when the Contractor has performed all material requirements of the entire contract or a divisible portion thereof, such that the underlying purpose of the contract has not been substantially impaired. Stated another way, a material breach has not occurred. Reference page \_\_ in the Key Concepts section of this document for additional information.

**Termination for Cause:** An exercise of the County's contractual right to completely or partially terminate a contract because of the Contractor's failure to perform its contractual obligations. Generally, County Procurement will only support a "Termination for Cause" if the Contractor has failed to "Substantially Perform." Contracts are not usually terminated because a Contractor does not completely or perfectly perform (minor non-performance issues remain). Contracts may be "Terminated for Cause" due to minor non-performance issues when the contract documents expressly require "Perfect Performance."

**Termination for Convenience:** An exercise of the County's right to terminate or cancel performance of work under contract, in whole or in part, if the County determines that termination is in the County's best interest. (see "Termination Costs").

**Termination Costs:** Cost incurred by a Contractor solely attributable to a contract termination. If allowed by contract, a Contractor may recover such costs when a contract is "Terminated for Convenience." Examples would be restocking fees, transportation COSTS, amortized capital expenditures, etc.

**"Termination Letter:** Formal notification to a Contractor that a contract has been terminated.

## INTRODUCTION

This document provides guidelines for Contract Administrators and Buyers to use in the "POST AWARD" PERFORMANCE phase of contracts. It applies to all contracts awarded through the purchasing department. The authority of the Contract and Procurement Director is granted by § 11-35-50 of the SC Code of Laws and Article V of the Chester County Code.

This document addresses contract set-up through completion. One of the primary tools described herein is the "Contractor Performance Report." It can be used positively to document and report exceptional performance and negatively for non-performance. While the majority of Contractors endeavor to provide quality performance, it is a given that all buyers will encounter performance problems with Contractors at some point during their careers. Non-performance should

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be addressed at the lowest level possible. The levels addressed in this guideline, ranked lowest to highest (1 = lowest, 3 = highest), are as follows:

1. Contract Administrator
2. Buyer
3. Contract and Procurement Director

This document's structure is based on the following classification:

1. Contracts Completed by Procurement Office.

### KEY CONCEPTS

**PARTNERING:** An ongoing process initiated at the beginning of the performance phase of a contract, which encourages both County and Contractor personnel to work together to achieve the contract objectives. This process is essential to the success of various service and other type contracts. It involves the development of a cooperative management team, representing both parties, which seeks to identify common goals and objectives. Stated another way, it is the process of aligning expectation. To be effective, the process brings about a "mutual win" situation and avoids an "us against them environment." The goal is to avoid litigation that involves unnecessary expense, delay, and disruption. The key elements within this guideline supporting this concept are the "Contract Administration Plan", identification of key personnel plus their roles (all parties), timely communications that reinforce initial efforts to align expectations, and the use of "Contractor Performance Reports" to recognize exceptional performance. An argument could be made that if pursued earnestly, the application of the "Partnering Concept" may potentially save the County more funds (through cost avoidance) than any other contract administration procedure described in this document. All personnel are encouraged to look for ways to establish and strengthen relationships with Contractors through the use of the concept.

**DOCUMENTATION:** A critical key to dealing effectively with non-performance issues. It should clearly identify the unsatisfactory performance, associated provisions in the contract documents, remedies sought, and a means that both parties can use to verify successful performance. In all cases the documentation should be specific and stay on point. Introduction of unrelated items is often confusing and counterproductive.

**LIMITED DISCRETIONARY AUTHORITY:** Throughout the contract administration process, Buyers will function as agents of the County and exercise discretion when dealing with contractual matters. This discretion is limited in at least two ways. First, the authority to change or modify a contract is limited to the buyer, (or his designee -- in writing) that issued the award. Second, changes and modifications are limited in size and scope so as not to invalidate the original procurement process. This second limitation is determined on a case-by-case basis and will be dependent on things like price break quantities, delivery requirements,



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specifications, performance requirements, etc. The Buyer is responsible to determine if a proposal change or modification would have impacted on vendor responses to the original solicitation to the point where either a different vendor may have been awarded the contract or a different set of vendors may have participated.

**CHANGE ORDERS and CONTRACT MODIFICATIONS:** During the contract administration process, it may be necessary to clarify, change or modify the contract. It is essential that all county personnel understand that only the Buyer, who awarded the contract (or a designee – authorized in writing), can perform these actions regarding that contract. The legal definitions for “Change Order” and “Contract Modification” can be found on pages 1 and 2. Buyers act on contracts they award. Once signed, these documents are incorporated into the contract documents.

**SEPARATE OR SUPPLEMENTAL CONTRACTS:** Generally, the County enters into a contract by accepting a Contractor’s response to a solicitation prepared by a Buyer. The Buyer’s signature on the award qualifies as the County’s authorized signature. Accordingly, separate or supplemental contract documents (i.e. documents other than the Solicitation, Bid/Proposal, and Notice of Intent to Award) are not usually signed, either before or after award. This is particularly applicable to standard contracts prepared by Contractors and offer to County personnel for signature. When they are, the only personnel to sign such documents on behalf of the County is the Buyer that awarded the contract. Buyers are cautioned to review these additional documents carefully to ensure they do not modify the contract in a way that would invalidate the procurement’s evaluation and award process. It is very important that there is a contract provision that indicates which part of the contract documents take precedence a conflict should exist.

**SUBSTANTIAL PERFORMANCE:** Exists when the contractor has performed all material requirements of the entire contract or a divisible portion thereof, such that the underlying purpose of the contract has been substantially impaired. Stated another way, a material breach has not occurred.

*General Rules:* If a contractor has substantially performed, termination for cause would not be warranted, but the county would be entitled to recover any damages resulting from the contractor’s failure to perform. If a contractor has not substantially performed (i.e., has materially breached the contract), the county may terminate for cause. If the county terminates for cause and the contractor’s breach is not found to be substantial, the county may be liable for breach of contract.

*Application:* In the absence of an agreement to the contrary, the concept of substantial performance is generally applicable to contracts for either construction, services, or goods mixed with services. Different rules apply for sale of goods governed by the Uniform Commercial Code, (UCC). S.C. Code Ann. § 36-2-601.

**TERMINATION FOR CAUSE:** Should the contract administration process NOT be successful, it may be necessary to terminate a contract. Generally, the Procurement Office will only support a “Termination for Cause” if the Contractor has failed to “Substantially Perform”. Contracts are not usually terminated

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because a Contractor does not completely or perfectly perform (minor non-performance issue remain). Contracts may be "Terminated for Cause" due to minor non-performance issues when the contract document expressly require "Perfect Performance". The County is expected to pay Contractors based on their performance. Incomplete performance should receive proportionately incomplete payment. Refer to Attachment \_\_\_\_ (Termination Letter) for details.

**CONTRACT CONTROVERSY:** Generally, a dispute between the County and a Contractor in regards to the performance or interpretation of a contract. A "Request for Resolution" of a "Contract Controversy" invokes the Procurement Directors authority to conduct an administrative review and resolve the controversy. This process is used when the contractor and County cannot reconcile differences at a lower level than the Procurement Director. While this process is a last resort, it is not necessary to wait and use it only when a contract is being terminated. It may be used effectively at any point during the life of the contract to address an issue that must be resolved before the contract can be completed. "Contract Controversy" proceedings may be initiated by the County or Contractor. Refer to Attachment \_\_\_\_ (Contract Controversy) for details.

**Contracts Completed by County**

**Basic Approach:** The County's Procurement Office is responsible for administering the contracts awarded by the County through completion or termination. This would include initiating or defending "Contract Controversy" proceedings and any associated appeals. Buyers are available to advise on contract administration matters upon request.

- Buyer adjusts "Contract Administration Plan" developed during the "Pre-Award" phase as needed. Additional adjustments may be warranted through out the "Post Award" phase of the contract.

When appropriate, the Buyer arranges and runs a meeting with the Contractor and key County personnel to discuss their roles and expectations regarding the contract. At this meeting, both parties share their understanding of the contract. Emphasis is placed on specific performance measures of special concern. The process for completing "Change Orders" and Contract Modifications" should be addressed. Other topics of discussion may include, but are not limited to, invoicing and payment processing. The Buyer completes adjustments to the "Contract Administration Plan" as needed. The Buyer copies the Contractor and County Contract Administrator with the adjusted plan.

- If someone other than the Buyer will perform contract administration duties, a "Contract Administration Designation Letter" is completed. It identifies the person performing contract administration duties and their specific scope of authority. The contract administration plan is referenced and attached. A sample letter is included as Attachment \_\_\_\_\_. A copy of the letter should be provided to the Contractor.
- Upon initial non-performance, the County Contract Administrator or Buyer should:

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1. Identify the specific performance issues and the contract provisions that apply. Remember, it is important to be specific and stay on point.
2. Review contract provisions with the Buyer if uncertain about the intent of the documents. County Contract Administrator does not proceed until agreement is reached with the Buyer.
3. Contact the Contractor verbally (fax and e-mail are also appropriate) to discuss the specific non-performance issues plus the associated contract provisions. It is important to address what it will take to resolve the matter and how it will be checked. Designated Contract Administrators need to be careful not to exceed their authority. Any interpretation of the contract they provide to the Contractor must not, in effect, be a "Change Order" or Contract Modification" unless that authority has been expressly provided in their designation letter.
4. Document the conversation with a "Memorandum for Record" or a letter to the Contractor confirming the conversation. The form of documentation is a judgement call. If the Contractor appears cooperative, a "Memorandum for Record" may be in order. Memorandums are in-house documents that are not use to correspond with Contractors. They may be used as attachments to other documents being sent to contractors. If the Contractor seems uncooperative or untrustworthy, a letter to the Contractor confirming the conversation is needed. This provides a formal record of notification. In either case the Buyer should be copied.

- If on-performance continues after initial notification, the Procurement Office should:
  1. Prepare a formal "Contractor Performance Report." The format selected depends on the situation. In most cases the first report should utilize and "OPEN LETTER" or "CURE LETTER" format. Refer to the "Contractor Performance Report" definition on page \_\_\_ and the associated Attachment \_\_\_ for information on format usage. In either case, the report should specifically address the areas of non-performance and the associated provisions of the contract. Just like with the initial notification, it is important to be specific and stay on point. Any new non-performance issues (related or similar in nature), which have occurred since the original notification to the contractor, are to be identified as such and included in the report. The content and presentation OF THE "contractor Performance Report" is the responsibility of the Procurement Office. The report may be prepared by the Contract Administrator, but must be signed by the Buyer. A copy of the "Memorandum for Record" or letter confirming the initial conversation with the Contractor should be attached to the copy of the report.
  2. The "Contractor Performance Report" is to be mailed via **CERTIFIED MAIL (RETURN RECEIPT REQUESTED)** to the Contractor. The Contractor is routinely afforded 10 days from the date of receipt to respond. The report instructs the Contractor to send copies of their response to the Procurement Office.

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- If the Contractor does not respond to the "Contractor Performance Report", the Buyer should:
  1. Follow up with the Contractor to see if a response will be forthcoming.
  2. If a response is forthcoming, follow the procedures in the next bullet
  3. If a response will not be forthcoming, issue the contractor a 2<sup>nd</sup> report utilizing the "SHOW CAUSE LETTER" format. A sample letter is contained in Attachment #3.
  4. If a response is not forthcoming on a "Show Cause Letter" format report, the contract can be terminated, if appropriate (e.g., non-performance is substantial). Contract Termination Letter guidelines and formats are listed in Attachment #5.
- If the Contractor responds to the "Contractor Performance Report", the Buyer should:
  1. Review the Contractor's response upon receipt and determine if acceptable.

NOTE: Acceptable Contractor responses will vary based on the level of non-performance and the County's need. Contractor responses should provide an explanation of the cause(s) for non-performance plus how they intend to resolve current problems and prevent recurrences. If the Contractor's response is substantially acceptable, additional correspondence (also sent via certified mail) may be needed to clarify specifics. If the Contractor's response is substantially unacceptable, the Buyer may issue a separate "Contractor Performance Report" utilizing the "Show Cause Letter" format. Should the Contractor not respond or provide an unacceptable response to the "Show Cause Letter", a "Termination Letter" may be issued, if appropriate. Samples of the various documents can be found in Attachment #'s 3,4, and 5 respectively.

2. Prepare the County's "Buyer's Review of Contractor's Response" per Attachment #4. At the discretion of the Buyer, the determination can be in the form of a letter to the Contractor, "memorandum for Record", or simply an annotation on the Contractor's response. The method selected should be based on the severity of the performance problems, response by the Contractor, and the working relationship between the Agency and Contractor.

NOTE: The Buyer's review of Contractor's Response" document may be used to accept the Contractor's response (as is), further negotiate with the Contractor, or as part of the justification to terminate a contract. Its intended purpose is to formally establish agreement of a resolution between the parties involved.

3. Monitor compliance with the Contractor's response. The contract may be terminated if the Contractor does not perform as indicated in their response. The contract may also be terminated for future same type or similar non-performance, which established a trend. A "Contractor

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4. Performance Report – Show Cause Letter Format” should be issued by the Buyer prior to termination providing the Contractor an opportunity to identify causes for non-performance outside their control.
5. Prepare a “Termination “Letter when applicable. The termination documentation should clearly identify any new non-performance problems and the associated contract provisions. It also includes the file documents from the original non-performance resolution process. A sample termination letter is included in Attachment #5.
6. File a “Contract Controversy” with the Procurement Director when necessary. The County will use its legal counsel to file a contract controversy when they cannot resolve a disagreement with the Contractor. Often the disagreement involves termination terms. Refer to Attachment #6 for more information. Please note that the Contractor may also file a “Contract Controversy.”

NOTE: Upon successful resolution of non-performance or termination of a contract, copies of all contract administration documents will be packaged in chronological order by the Buyer and retained in the Procurement Office.

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**“Contract Administration Plan Review – Post Award” Attachment #1**

This review of the Contract Administration Plan is completed when contract award has been determined. The Buyer awarding the contract completes the review. The steps will vary from one contract to the next; therefore, they are at the reviewer's discretion. An initial meeting with the Contractor to review the contract and the associated “Contract Administration Plan” may prove helpful to all parties. The specific aspects of this meeting are addressed toward the beginning of the sections for each contract type.

**Suggestion:** The County may opt to develop one or more standard approaches to the “Contract Administration Plan.” Then they need only specify deviations from the standard and incorporate the remainder by reference.

The process may include, but is not limited to the following:

1. Review to ensure critical clauses and requirements related to administration (such as milestones) have been incorporated.
2. Review the Contractor's Performance Plan (when available) and incorporate key administration elements.
3. Identify from previous contract files (When applicable) issues and problems with the same contractor or contracts with similar requirements. Include approaches (proactive when possible) to monitor for issues and problems identified.
4. Meet with end users to discuss performance monitoring. Identify and rank performance criteria...
5. Outline plan for key processes such as receiving, inspecting, testing, accepting, and paying.
6. Fine tune or develop a surveillance plan. This strongly recommended on service contracts. It may consist of daily, weekly, monthly, quarterly, and/or annual checklists. It is important to identify how the County and Contractor will participate. It is equally important on certain types of services and commodities to specify the time of day the checklist will be completed. A series of reports may augment or replace certain checklists.
7. List key County and Contractor contract administration personnel and their roles.

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**“Contract Administration Designation Letter” Attachment #2**

“Contract Administration Designation Letter” is issued by the Buyer formally designating who will be performing contract administration duties and their scope of authority. A sample letter is located on the next page. A copy of the “Contract Administration Plan” is included as attachment. Only procurement personnel can issue this type letter.

**Contracts Issued by County Buyer:**

If someone else other than the Buyer will perform contract administration duties, a “Contract Administration Designation Letter” is completed by the County Buyer. It identifies the person and their specific scope of authority.

**Sample Letter on Next Page**

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**Sample "Contract Administration Designation Letter" Format**

[Letterhead]

[name, title and

[date]

Address of designee]

RE: Contract Administration Designation for [contract # and description]

Dear [name of designee]

Congratulations, you are hereby designated as the County Contract Administrator for the above referenced contract. In this capacity you have the critical task of monitoring the performance of the above referenced contractor compliance with the contract documents. The contract administration plan (attached) is provided to assist in this effort. Under this delegation of authority, you are authorized to perform the following:

[enter the specific functions being delegated – (examples: 1. Monitoring the contractor's performance to assure compliance with the technical requirements of the contract; 2. Reviewing and approving progress reports, technical reports, and other items required for approval; 3. Recommending to the Buyer, in writing desired contract changes with justification for the proposed changes.)]

This designation **DOES NOT** authorize you to take any other actions including, but not limited to, the following:

[enter specific functions not being delegated – examples: 1. Making changes to contract provisions. This includes changes involving increase/decrease in the contract price as well as no cost changes; 2. Making contract scope changes; 3. Requiring extras; 4. Terminating the contract in whole or in part.)]

When the subject is completed, all records maintained by you shall be forwarded to this office for retention in the contract file.

Should you need additional information or technical support, I can be reached at [enter Buyer's phone, fax, and e-mail address]. **DO NOT** assume that the contract has been extended or otherwise renewed unless you are formally informed to that effect by this office.

Sincerely,

[Buyer's signature block]

cc: Contractor (if appropriate)

CCPP111<sup>12</sup>



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### **“Contractor Performance Report” Attachment # 3**

**“Contractor Performance Report”:** Report used to feedback of Contractor performance. There are 3 formats to use as needed. These formats are “OPEN”, “CURE”, and “SHOW CAUSE.” The uses of each are described below.

**NOTE:** Any report issued for non-performance is to be sent via certified mail with return receipt requested. The report need to clearly identify the unsatisfactory performance, associated provisions in the contract documents, remedies sought, and a means that both parties can use to verify successful performance. In all cases the documentation should be specific and stay on point. Introduction of unrelated items is often confusing and counterproductive.

**“Open” Format:** Used to report either positive (excellent performance) or negative (non-performance) contract performance when a “Cure Letter” or “Show Cause Letter” format is not warranted. The Contractor is not required to respond to positive reports. When a negative report is issued, they are generally given ten (10) days (from date of receipt) to correct the problem(s) plus respond with the reasons for the non-performance and how they plan to prevent it from happening again. The Buyer has the discretion to increase the numbers of days when warranted.

**“Cure” Format:** Used to report that it appears the Contractor is in danger of not performing per the terms and conditions of the contract. This format is used **ONLY** when there is sufficient time for the Contractor to cure/correct their performance as specified in the contract documents. The Contractor is generally given ten (10) days (**from date of receipt**) to correct the problem(s) plus respond with the reasons for the non-performance and how they plan to prevent it from happening again. The Buyer has the discretion to increase the numbers of days when warranted.

**“Show Cause” Format:** Used to report that the Contractor has **NOT** performed per the terms and conditions of the contract and is in default. This letter is also used should a Contractor fail to cure performance as agreed in a “Cure Letter” process or simply does not substantially perform (regardless of whether a “Cure Letter” was sent). It generally allows ten (10) days (**from date of receipt**) for the Contractor to provide an explanation for non-performance and propose a remedy(s). The Buyer has the discretion to allow more that ten (10) days when appropriate.

**Key Paragraph:** The following paragraph should be included in all communications with Contractors concerning non-performance:

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**“Any assistance given to you on this contract or any acceptance by the County of either delinquent or non-conforming goods or services will be solely for the purpose of mitigating damages. It is not the intention of the County to condone any failure to fully perform or to waive any rights the County has under the contract.”**

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## CONTRACTOR PERFORMANCE REPORT COVER PAGE

**PURPOSE:** This report is used to document positive and negative Contractor performance. It provides a mechanism to inform appropriate parties and document contract files as needed. The report consists of this cover page plus and "Open Cure", or "Show Cause" letter and attachments. The cover page identifies the contract and key parties. It is NOT mailed to the Contractor. The letters and attachments, which are mailed to the Contractor, identify the specific issues, associated contract provisions, remedies sought, and a means by which all parties can verify successful performance. This cover page need only be completed 1 time for each set of documentation (identification of non-performance through resolution or termination).

**CONTRACTOR RESPONSE:** Contractors do NOT need to respond to positive reports. Contractors are required to respond to negative reports within the time frame specified in the attachment. Contractors are to address each issue listed in the report to include how and when performance will be corrected plus what steps will be taken to prevent a recurrence.

### CONTRACT INFORMATION:

Contract #: \_\_\_\_\_ Effective Dates: \_\_\_\_\_ to \_\_\_\_\_ Date of Award: \_\_\_\_\_

Solicitation #: \_\_\_\_\_ Commodity Description: \_\_\_\_\_

Depart Name: \_\_\_\_\_ Contract Type: \_\_\_\_\_  
(Agency/ Term)

Buyer: \_\_\_\_\_ Phone #: \_\_\_\_\_

FAX #: \_\_\_\_\_ e-mail address: \_\_\_\_\_

### CONTRACTOR INFORMATION

County Contractor #: \_\_\_\_\_ FEIN/SSN #: \_\_\_\_\_

Contractor's Business Name: \_\_\_\_\_

Contractor's Rep.'s Name: \_\_\_\_\_

Street Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

City: \_\_\_\_\_ FAX #: \_\_\_\_\_

State / Zip Code: \_\_\_\_\_ e-mail address: \_\_\_\_\_

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## Contractor Performance Report

### “Open Letter” Format

[Letterhead]

Date: \_\_\_\_\_  
(date report mailed to Contractor)

Contractor: Representative's Name and Title  
Name  
Street Address  
City / State / Zip Code

RE: PO #? Contract # - Description – Contractor Performance

Dear \_\_\_\_\_ or Gentlemen

You are notified that the County is concerned about your performance of the above referenced contract (or finds your performance of the above referenced contract deficient, etc.) in the following areas:

1. Description of Performance Concern (Deficiency, etc.);  
Contract Reference (description and page location);  
Remedy:  
Method of Verification:
2. Description of Performance Concern (Deficiency, etc.);  
Contract Reference (description and page location);  
Remedy:  
Method of Verification:

(continue with same format until all area are addressed)

Unless corrective action is taken, your continued non-performance may lead to a finding of “default” and result in contract termination for cause. Therefore, you have up to 10 days after receipt of this notice [ or insert any other time that the Procurement Officer may consider reasonably necessary] to:

1. correct this condition (these conditions), plus
2. provide this office a written explanation of the cause(s) and measures taken to prevent a recurrence.

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Responses to this Contractor performance report are to be sent to:

Procurement Officer's

Or

Buyer's Name and Address

Any assistance given to you on this contract or any acceptance by the County of either delinquent or non-conforming goods or services will be solely for the purpose of mitigating damages. It is not the intention of the County to condone any failure to fully perform or to waive any rights the County has under the contract.

Sincerely,

Buyer's Signature Block

|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By       |
| Effective Date:                                       | Supersedes No: | Page No. 18 of 28 |

### Contractor Performance Report

#### “Cure Letter” Format

[Letterhead]

Date: \_\_\_\_\_  
(date report mailed to Contractor)

Contractor: Representative's Name and Title  
Name  
Street Address  
City / State / Zip Code

RE: PO #? Contract # - Description – Contractor Performance

Dear \_\_\_\_\_ or Gentlemen

You are notified that the County considers your .... [specify the Contractor's failure(s)] .... A condition that is endangering performance of the contract. The applicable contract provision(s) remedy(s) sought and verification method(s) can be referenced in our letter dated \_\_\_\_\_. (If this information has not been formally provided to the Contractor, incorporate some of the “Open Letter” format). There fore, unless within ten (10) days after receipt of this notice [or insert any longer time that the Procurement Officer may consider reasonably necessary].

1. correct this condition (these conditions), plus
2. provide this office a written explanation of the cause(s) and measures taken to prevent a recurrence.

The County may terminate for cause per the.... [insert title of clause and page number location] ..... in the contract.

Responses to this “Cure Letter” are to be sent to;

[Contracts and Procurement Director

Or

Buyer's Name and Address]

|                                                                     |                |                   |
|---------------------------------------------------------------------|----------------|-------------------|
| Title:<br><br>Purchasing Procedure Manual – Contract Administration |                | Procedure #:      |
|                                                                     |                | Submitted By:     |
|                                                                     |                | Approved By       |
| Effective Date:                                                     | Supersedes No: | Page No. 19 of 28 |

Any assistance given to you on this contract or any acceptance by the County of either delinquent or non-conforming goods or services will be solely for the purpose of mitigating damages. It is not the intention of the County to condone any failure to fully perform or to waive any rights the County has under the contract.

Sincerely,

Buyer's Signature Block

|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By       |
| Effective Date:                                       | Supersedes No: | Page No. 20 of 28 |

### Contractor Performance Report

#### “Show Cause Letter” Format

[Letterhead]

Date: \_\_\_\_\_  
(date report mailed to Contractor)

Contractor: Representative's Name and Title  
Name  
Street Address  
City / State / Zip Code

RE: PO #? Contract # - Description – Contractor Performance

Dear \_\_\_\_\_ or Gentlemen

Since you have failed to [insert “perform Contract No. \_\_\_\_\_ within the time required by its terms”, or cure the conditions endangering performance under Contract No. \_\_\_\_\_ as described in the County’s letter (date)”, the County is considering termination of the contract under the provisions for default. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to:

[County Procurement Officer

Or  
County Buyer’s Name and Address]

Your response is to be received no later than ten (10) days after receipt of this notice. Your failure to present any excuses within this time frame may be considered an admission that none existed. Your attention is invited to the respective rights of the Contractor and County and the liabilities that may be invoked if a decision is made to terminate for cause.



|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By       |
| Effective Date:                                       | Supersedes No: | Page No. 21 of 28 |

Any assistance given to you on this contract or any acceptance by the County of either delinquent or non-conforming goods or services will be solely for the purpose of mitigating damages. It is not the intention of the County to condone any failure to fully perform or to waive any rights the County has under the contract.

Sincerely,

Buyer's Signature Block

|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By       |
| Effective Date:                                       | Supersedes No: | Page No. 22 of 28 |

#### **“Buyers Review of Contractor’s Response Letter” Attachment #4**

This instrument is used by the Buyer, who submitted the “Contractor Performance Report,” to formally document their review of the Contractor’s response. It may be in the form of a letter to the Contractor (sample on next page), “memorandum for Record” or simply an annotation on the Contractor’s response. All correspondence with the Contractor should specify a time requirement for their response and be sent **VIA CERTIFIED MAIL**.

**Note: The acceptability of Contractor responses will vary based on the level of non-performance and the agency’s need. Contractor responses to “Contractor Performance Reports” should provide an explanation of the cause(s) for non-performance plus identify how they intend to resolve current problems and prevent recurrences.**

There may be three types of determinations:

1. **“Acceptable”** – Indicates that the Contractor’s response is acceptable as submitted.
2. **“Conditional”** – Indicates that the Contractor’s response is acceptable contingent upon certain conditions, deletions, or changes. It generally requires follow-up correspondence by both parties to arrive at a final resolution. Used when the majority of the Contractor’s response is acceptable.
3. **“Unacceptable”** – Indicates that the Contractor’s response is too far out of line with expectations or they are unwilling to negotiate. At this point it has been determined that additional negotiations are not likely to result in resolution.

“Acceptable” Contractor responses are confirmed in writing. The confirmation does not solicit a response from the Contractor. When Contractor responses are determined to be “Conditional”, the Buyer should negotiate with the Contractor until an “Acceptable” or “Unacceptable” determination is made. All negotiations are confirmed in writing. If appropriate, a “Termination Letter” is generated by the Buyer and sent to the Contractor when their response is “Unacceptable”.

A copy of all correspondence associated with this process is to be included in the documentation package provided the County Procurement Office.

**CAUTION:** This process may, by its nature, move beyond merely interpreting the existing contract. Buyers are cautioned to remain within their scope of authority. Should the process in effect result in a “Change Order” or “Contract Modification” the appropriate Buyer should prepare and execute the respective documents in accordance with the County Purchasing Procedures. This letter or report cannot be substituted for the appropriate contract documents.

**“Buyers Review of Contractor’s Response Letter” Format on Next Page**

|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By       |
| Effective Date:                                       | Supersedes No: | Page No. 23 of 28 |

[Letterhead]

Date: \_\_\_\_\_  
(date mailed to Contractor)

Contractor: Representative's Name and Title  
Name  
Street Address  
City / State / Zip Code

RE: PO #? Contract # - Description – Contractor Performance

Dear \_\_\_\_\_ or Gentlemen:

Thank you for your response dated \_\_\_\_\_, to our letter dated \_\_\_\_\_, concerning the above referenced contract. Our review has resulted in a ("Acceptable" or "Conditional") determination.

"Acceptable" determinations should contain a 2<sup>nd</sup> paragraph cautioning the Contractor that deviations from what has been agreed upon or future non-performance may result in termination. Finally it should state that any acceptance or assistance given in this specific case of non-performance will not relieve the contractor from future performance requirements as specified in the contract documents

"Conditional" determinations should have 2<sup>nd</sup> paragraph specifically identifying the changes, additions, or deletions necessary to come to agreement. Finally, a 3<sup>rd</sup> paragraph should be included specifying a deadline for response plus a disclaimer that any acceptance or assistance given in this specific case of non-performance will not relieve the contractor from future performance requirements as specified in the contract documents.

Sincerely

Buyer's Signature Block

**NOTE:** "Unacceptable" determinations should be completed in a report, as opposed to letter format. The specific unacceptable elements are listed. The reports states that it appears future negotiations will not result in agreement. The Contractor receives the report as an attachment to a termination letter.

|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By       |
| Effective Date                                        | Supersedes No: | Page No. 24 of 28 |

### **“TERMINATION LETTER” Attachment #5**

**“Termination” Letter:** Formal notification to a Contractor from the Buyer that a contract has been terminated. The contract administration process outlined in this document address non-performance that may result in **“Termination for Cause”**. The Buyer that awarded the contract prepares and signs this letter. The County Procurement Office is responsible for terminating all contracts unless a department has been expressly delegated the authority to terminate a contract.

It is critical that County personnel understand the different termination types and the impact on the parties involved. They are as follows:

**Termination for Cause:** An exercise of the County’s contractual right to completely or partially terminate a contract because of the Contractor’s failure to perform its contractual obligations. Normally, Procurement will not terminate a contract for “Cause” unless there is substantial or material non-performance. A contract may be terminated for minor non-performance if the contract documents clearly specify the higher performance standard. Termination costs are **NOT** incurred by the County with this type termination.

**Termination for Convenience:** An exercise of the County’s right to terminate or cancel performance of work under contract, in whole or in part, if the County determines that termination is in the County’s best interest. (See “Termination Costs”).

**Termination Costs:** Costs incurred by a Contractor solely attributable to a contract termination. If allowed by contract, a Contractor may recover such costs when a contract is “Terminate for Convenience.” Examples would be restocking fees, transportation costs, amortized capital expenditures, etc.

**“Termination Letter” Format on Next Page**

|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By       |
| Effective Date:                                       | Supersedes No: | Page No. 25 of 28 |

[Letterhead]

Date: \_\_\_\_\_  
(date mailed to Contractor)

Contractor: Representative's Name and Title  
Name  
Street Address  
City / State / Zip Code

RE: PO #? Contract # - Description – “Termination Letter”

Dear \_\_\_\_\_ or Gentlemen:

Termination for Cause:

1<sup>st</sup> Paragraph: States the above referenced contract is being terminated for cause, effective (date) based on the following unresolved non-performance issues. List the issues. A disclaimer should be included that states the list may not be comprehensive and additional issues may be identified as a later date.

2<sup>nd</sup> Paragraph: References the previous notifications to the Contractor (include as attachments) and the “Unacceptable” determination of their most recent response (also attached).

3<sup>rd</sup> Paragraph: Provides notification of need to re-procure and the possibility of the County requesting the Contracts and Procurement Director to suspend or debar the Contractor until they have reimbursed the County for any cost exceeding the original contract amount (optional – Buyer’s discretion).

4<sup>th</sup> Paragraph: Provides contact information for the Contractor to use to discuss the termination and any outstanding claims associated with the contract.

Termination for Convenience:

1<sup>st</sup> Paragraph: Thanks the Contractor for their performance of the above referenced contract to date. States the contract is being terminated for convenience, effective (date).

2<sup>nd</sup> Paragraph: “If you have any remaining claims pursuant to this contract, please make these claims within \_\_\_\_ days\* of receipt of this letter. Any claims should state a finite amount not subject to qualifications or conditions (“sum certain”) plus include adequate documentation.”

3<sup>rd</sup> Paragraph: Provides contact information.

|                                                        |                |                   |
|--------------------------------------------------------|----------------|-------------------|
| Title:                                                 |                | Procedure #:      |
| Purchasing Procedure Manual -- Contract Administration |                | Submitted By:     |
|                                                        |                | Approved By       |
| Effective Date:                                        | Supersedes No: | Page No. 26 of 28 |

Sincerely

Buyer's Signature Block

*\*The # days allowed for the Contractor to make claims are at the discretion of the buyer. A number of factors (examples: contract size and complexity, agency's need to know budget impact, etc.) enter into the buyers decision. In an effort to be reasonable, it is likely that discussions with the Contractor will be necessary. As a general rule, Contractor's should be afforded a minimum of thirty (30) days when the termination costs are easily determined. Proportionately more time should be afforded as the determination of costs grows in complexity. It may be reasonable to allow 60, 90, 120, or 180 days.*

|                                                                     |                |                   |
|---------------------------------------------------------------------|----------------|-------------------|
| Title:<br><br>Purchasing Procedure Manual – Contract Administration |                | Procedure #:      |
|                                                                     |                | Submitted By:     |
|                                                                     |                | Approved By       |
| Effective Date:                                                     | Supersedes No: | Page No. 27 of 28 |

### **“Contract Controversy” Attachment #6**

Contract Controversy: Generally, a dispute between the County and a Contractor in regards to the performance or interpretation of a contract. A “Request for Resolution” of a “Contract Controversy” invokes the Contracts and Procurement authority under §11-35-50, § 11-35-4230 of the SC Code and Article V of the Chester County Code, to conduct an administrative review and resolve the controversy. This process is used when the Contractor and County cannot reconcile differences. While this process is a last resort, it is not necessary to wait and use it only when a contract is being terminated. It may be used effectively at any point during the life of the contract to address an issue that must be resolved before the contract can be completed.

“Contract Controversy” proceedings may be initiated by an agency or Contractor. The Contracts and Procurement Director presides over the process. Buyers work with legal council to prepare and submit a “Request for Resolution” as outlined in the code for contracts. The Contracts and Procurements Director’s ruling is final unless it is fraudulent or appealed within ten (10) days by the adversely affected party.

### **“Request for Resolution Letter” Format on Next Page**

|                                                       |                |                   |
|-------------------------------------------------------|----------------|-------------------|
| Title:                                                |                | Procedure #:      |
| Purchasing Procedure Manual – Contract Administration |                | Submitted By:     |
|                                                       |                | Approved By:      |
| Effective Date:                                       | Supersedes No: | Page No. 28 of 28 |

[Letterhead]

Date: \_\_\_\_\_  
(date mailed to Contractor)

Contract and Procurement Director  
PO Box 580  
Chester, SC., 29706

RE: PO # / Contract # - Description – “Request for Resolution”

Dear \_\_\_\_\_:

[Agency Name] request resolution of a contract controversy concerning the above referenced contract. Despite our best efforts, the agency and Contractor have not been able to come to agreement on the following:

List the general nature of the controversy and the relief requested with enough particularity to give notice of the issues to be decided. It is helpful to reference the applicable portions of the contract documents with page locations or indicate they are silent on the issue. Any attachments should be referenced and listed as enclosures.

Should any additional information or clarification be needed, I can be reached at [enter phone, fax, and e-mail information]. Thank you for your consideration.

Sincerely,

Signature Block







STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

**SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF RICHARDSON  
CONSTRUCTION COMPANY'S  
APPLICATION AND MOTION FOR A  
TEMPORARY INJUNCTION**

Plaintiff Richardson Construction Company ("Richardson") submits this Supplemental Memorandum in Support of its Application and Motion for a Temporary Injunction in response to a new issue that arose during the December 12, 2014, hearing on Richardson's Motion for a Temporary Injunction. At the December 12, 2014, hearing, the Court expressed concern that it might lack jurisdiction to issue Richardson's requested temporary injunction on the ground that Richardson has not exhausted administrative remedies. For the reasons set forth herein, the Court has jurisdiction and the power to issue a temporary injunction enjoining Chester County from opening bids and awarding a mass site work services contract for the construction of the Giti Tire Manufacturing (USA) Ltd. tire plant in Chester County, South Carolina ("Project"). The Court should exercise its equitable power and issue Richardson's requested temporary injunction because, if an injunction is not issued, Chester County will open the bids for the Project and award a mass site work services contract, and Richardson will be irreparably harmed and without any available relief.

**ARGUMENT**

**I. Richardson Has Exhausted Administrative Remedies**

Page 1 of 6

11777162-1

At the December 12, 2014, hearing, Chester County argued that the Court cannot issue Richardson's requested temporary injunction because Richardson has allegedly not exhausted administrative remedies due to the fact that Richardson has an appeal pending before the South Carolina Procurement Review Panel. This position is erroneous: Richardson has in fact exhausted all relevant administrative remedies.

The Chester County Purchasing Policy and Procedure Manual ("Chester County Policy") provides that prospective bidders aggrieved in connection with the solicitation of a contract may submit a written protest to the Contracts and Procurement Director. Ex. K, at Invitation for Bid, §18.01 (CCPP089).<sup>1</sup> The Chester County Policy does not provide for any further level of review after submitting a protest to the Contracts and Procurement Director. Richardson submitted a written protest to the Chester County Contracts and Procurement Director on November 12, 2014. See Ex. I. The Chester County Contracts and Procurement Director issued a decision denying Richardson's protest on November 24, 2014. See Ex. F. Because a protest to the Contracts and Procurement Director is the only remedy available under the Chester County Policy, Richardson has exhausted administrative remedies under the Chester County Policy.

The Chester County Contracts and Procurement Director's denial of Richardson's protest forms the basis of the action before the Court. Therefore, Richardson has in fact exhausted all relevant administrative remedies. The fact that Richardson has an appeal pending before a different and unrelated administrative body (the South Carolina Procurement Review Panel) does not mean that Richardson has failed to exhaust administrative remedies for purposes of the present action. Richardson has exhausted administrative remedies under the Chester County Policy.

---

<sup>1</sup> All references to exhibits in this Memorandum are to the exhibits to Richardson's Memorandum filed with the Court on December 10, 2014.

## II. This Court May Issue a Temporary Injunction Even If Richardson Has Not Exhausted Administrative Remedies

Even if it were determined that Richardson has not exhausted administrative remedies, the Court can and should issue Richardson's requested temporary injunction pursuant to *Storm M.H. ex rel. McSwain v. Charleston County Board of Trustees*. See *Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trs.*, 400 S.C. 478, 486-87, 735 S.E.2d 492, 496-97 (2012). In *Storm M.H.*, a defendant argued that the court lacked jurisdiction because the plaintiff failed to exhaust administrative remedies. *Id.* at 486, 735 S.E.2d at 497. The South Carolina Supreme Court firmly rejected the defendant's argument:

Initially, we note that the Board [defendant] incorrectly characterizes its claim as one involving subject matter jurisdiction. As this Court has explained, "[t]he doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." . . . "Thus, the failure to exhaust administrative remedies goes to the prematurity of a case, **not subject matter jurisdiction.**"

*Id.* at 486-87, 735 S.E.2d at 497 (emphasis added) (quoting *Ward v. State*, 343 S.C. 14, 17 n.5, 538 S.E.2d 245, 246 n.5 (2000)); see also, e.g., *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973) (explaining that the failure to exhaust administrative remedies is not jurisdictional); *Vaught v. Waites*, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct. App. 1989) (same).

The defendant in *Storm M.H.* further argued that, even if the court had jurisdiction, it abused its discretion in exercising jurisdiction given the fact that the plaintiff failed to exhaust administrative remedies. *Id.* at 486, 735 S.E.2d at 497. The Supreme Court also rejected this argument and explained that "[w]hether administrative remedies must be exhausted is a matter within the trial judge's sound discretion and his decision will not be disturbed on appeal absent an abuse thereof." *Id.* at 487, 735 S.E.2d at 497 (quoting *Hyde v. S.C. Dep't of Mental Health*,

314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994)). The court further explained that the "general" rule that a plaintiff must exhaust administrative remedies is subject to several exceptions. *Id.* The court then held that it was proper to rule on the merits of the case, even though the plaintiff had not exhausted administrative remedies, for three reasons: 1) exhausting administrative remedies would have been "futile" because an unfavorable decision before the relevant administrative body was certain to be unfavorable; 2) administrative remedies "would have been inadequate given the immediacy" of the problem at issue and "the potential delay of an administrative appeal"; and 3) the case presented an issue of "public interest and a resolution would promote judicial economy." *Id.* Thus, the South Carolina Supreme Court clearly held in *Storm M.H.* that a court has jurisdiction over a case even when the plaintiff has failed to exhaust administrative remedies and that it is appropriate to exercise that jurisdiction under some circumstances.

Pursuant to *Storm M.H.*, this Court has jurisdiction to issue Richardson's requested temporary injunction even assuming that Richardson has not exhausted administrative remedies, which Richardson expressly denies. Furthermore, the Court should exercise its jurisdiction and issue a temporary injunction in this matter for the same reasons that the court in *Storm M.H.* chose to exercise jurisdiction.

First, given the State Engineer's firm and unequivocal denial of Richardson's protest on the ground that the Project is allegedly a private project not subject to any governmental procurement rules, exhaustion of administrative remedies is futile for Richardson because the Procurement Review Panel is almost certain to reject Richardson's protest.

Second, administrative remedies will certainly be inadequate given the fact that Chester County is in possession of the bids and intends to award a contract expeditiously. *See* Ex. F. All

indications are that, pursuant to Chester County's incorrect determination that the Chester County Policy applies, Chester County will open the bids and award a contract once the Temporary Restraining Order entered against it is lifted. If this were to occur, the Procurement Review Panel would be unable to afford Richardson any relief.

Third, this case presents an issue of public importance, for its impact on this Project as well as future projects, regarding the rules that must be followed when millions of taxpayer dollars are provided to a private company.

Thus, pursuant to *Storm M.H.*, this Court has jurisdiction to issue a temporary injunction enjoining Chester County from opening bids and awarding a contract even if it determines that Richardson has not exhausted administrative remedies. *Storm M.H. ex rel. McSwain*, 400 S.C. at 486-87, 735 S.E.2d at 496-97. This Court should exercise its discretion and issue a temporary injunction against Chester County because exhaustion of administrative remedies is futile under the circumstances, administrative remedies are inadequate to provide Richardson relief, and this case presents a matter of public importance.

If a temporary injunction is not issued, Chester County will open the bids and award a contract. If this happens, injustices will ensue. Richardson will forever be deprived of its right to compete for the Project, South Carolina taxpayer money will be used to pay for a contract awarded by a process that violated South Carolina law and wrongfully excluded a South Carolina corporation, and South Carolina taxpayers will pay more than they have to for the Project because the mass site work contract will be awarded through a process having very limited competition. This Court is in a unique position to stop these injustices. In fact, this Court is the *only* body that *can* stop these injustices. But, to do so, it must act immediately. Once Richardson's "administrative remedies" have been exhausted, the injustices will have already

occurred, and it will be too late to afford any relief to Richardson or to the citizens of South Carolina. This Court enjoys broad equitable power that "exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hooper v. Ebenezer Senior Servs. and Rehab. Ctr.*, 386 S.C. 108, 116-17, 687 S.E.2d 29, 33 (Ct. App. 2009) (citations omitted).

### CONCLUSION

For the reasons set forth herein as well as in Richardson's Memorandum submitted to the Court on December 10, 2014, this Court should exercise its discretion and its equitable powers and issue a temporary injunction preventing Chester County from opening bids and awarding a mass site work contract for the Project.

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC



R. Bryan Barnes (S.C. Bar No.: 007818)  
Mary Lucille Dinkins (S.C. Bar No.: 101177)  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
Tel: (803) 771-7900; Fax: (803) 343-7017  
[bryan.barnes@rtt-law.com](mailto:bryan.barnes@rtt-law.com)  
[lucy.dinkins@rtt-law.com](mailto:lucy.dinkins@rtt-law.com)  
**ATTORNEYS FOR RICHARDSON**  
**CONSTRUCTION COMPANY**

December 15, 2014  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2014, I served the foregoing document by First Class U.S. Mail postage prepaid and by email as indicated on the following:

Joanie Winters, Esquire  
Winters Law firm  
105 Main Street  
Chester, South Carolina 29706

[joanie@winterslawsc.com](mailto:joanie@winterslawsc.com)

Jacqueline L. Heam





STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

**AFFIDAVIT OF  
ROBERT M. RICHARDSON**

ROBERT M. RICHARDSON, after being duly sworn, personally appears before and deposes and says that:

1. Affiant's name is Robert M. Richardson.
2. Affiant makes this Affidavit in support of Plaintiff Richardson Construction Company's ("Richardson") Application and Motion for a Temporary Injunction.
3. Affiant is the President of Richardson.
4. Affiant has personal knowledge of the information set forth in this Affidavit.
5. On or about June 18, 2014, I learned that Clyde Fish had been designated Director of Construction and Manufacturing for the Giti Tire Plant to be constructed in Chester, SC.
6. Clyde Fish was the Director of Construction for the Bridgestone Firestone Tire Plant in Aiken South Carolina in 1997-1998.
7. Richardson Construction was the site work contractor for the Bridgestone Firestone Tire plant and enjoyed an excellent reputation with Mr. Fish for completing the site work early and with good workmanship, putting the entire project ahead of schedule. The

Bridgestone Firestone plant was the first plant Mr. Fish had been chief in charge of constructing.

8. During the June 18, 2014 phone conversation with Fish, Fish assured me that Richardson Construction Company was the "go to guy" and that it would be invited to bid the Giti Chester Project. Mr. Fish stated at some length how pleased he had been with Richardson's performance at Bridgestone and how that performance had benefitted him in his subsequent career where he has been continually employed building tire plants and known as an expert in the field, due to his reputation from Bridgestone.

9. On or about July 2, 2014, Richardson Construction received the South Carolina Business Opportunities (SCBO) advertisement requesting pre-qualification statements be submitted by contractors who were interested in the Giti project. The SCBO advertisement contained **no indication that any public money was involved** in the project. Giti was listed as the owner. Prequalifications and Bids were advertised to be opened privately. Bid time was listed as 4:00 pm instead of standard 2:00 pm bid time for public projects. Bids were to be submitted to Alliance Engineers, **not to or on behalf of any County or State agency.** No bid bond, performance bond, or payment bond was required. An arbitrary limit of 5 bidders was established for the project in the SCBO advertisement. Finally, the project completion date in the advertisement was prior to the date this project is actually going to be awarded and commenced. Contractors who may not have been interested in bidding when the project's commencement date was in August, may be available and interested in bidding now that the project will start in January.

10. The project has not been re-advertised as required by the State and County codes to reflect the true nature of the project and therefore I believe this project has never been advertised.

11. According to the Chester CPO's decision in this matter, Chester County does not assert that it advertised the project for bids per its procurement policy, or in any way.

12. I concluded from the July 2, 2014 advertisement that the project was a private job since the characteristics of the advertisement were antithetical to a public procurement of any type.

13. Accordingly, on or about September 18 2014, in order to ensure our placement on the bidders list for what I thought was a private job, I again contacted Mr. Fish to inquire as to the status of the project and to ask if there was anything else Richardson Construction needed to do to assure that it was on the bid list. Fish stated that he was personally in control of who would be invited to bid the job and that Richardson was on the bid list.

14. In Mid-September, after a considerable period of time passed and Richardson Construction had not yet received a formal invitation to bid, I instructed our office manager to send a letter expressing Richardson's interest to Giti's United States Headquarters in Rancho Cucamonga, California. On September 18, 2014, Clyde Fish called me via cell phone and told me *"Bobby, you're on the list. Don't send anything else to Cucamonga or I might take you off the list. You can call me if you have questions about the project, but don't bother them. I am in control of who is bidding and you will have a chance to bid."*

15. He further expressed that there would only be five bidders on the project because he did not want to evaluate more than five bids.

16. He also explained that Columbia based Alliance Consulting Engineers was no longer the engineering firm handling the project and had been replaced by Gresham, Smith and Partner based in Nashville, TN.

17. At the time of this September 18, 2014 conversation, I was under the distinct

impression from all the knowledge I had of the project, that at least the site work portion of the project must be a private job. I perceived Mr. Fish's ability to discretionarily terminate and replace Alliance as further indication of the same.

18. Had Mr. Fish not repeatedly insisted that he was in absolute control of the number and identity of the bidders, I would not have continued to call him and request that we be on the bidder's list. If the job were going to be bid publicly by competitive sealed bids (as the State Code requires for a job like this), I would simply have waited for the public bid advertisement and ordered a bid package.

19. In late or early - mid October, Clyde Fish, together with members of Giti's engineering firm contacted me by phone to ask my advice about when the site work should be commenced.

20. Mr. Fish and the project engineering team expressed serious concerns that the site work should perhaps not be commenced until after the winter season due to weather concerns. They asked my experience with the winter weather in the area in recent years, and if I thought it was worth commencing the project with the possibility of bad weather and shorter daylight hours.

21. I explained that the weather is sometimes bad, and sometimes good in the winter in South Carolina, and that spring time weather in South Carolina is usually not remarkably better. I further explained that starting the job sooner would likely result in a more favorable outcome since bad winter/spring weather in this area typically occurs in bouts or spells, and periods of good weather are interspersed.

22. On October 29, 2014, I received a letter via email and a nearly simultaneous phone call from Mr. Fish explaining that Richardson Construction would not be invited to bid the

project. Mr. Fish was apologetic, but said that the matter was beyond his control.

23. He explained that four people – himself and three engineers from Gresham Smith, voted on who the five invited bidders would be, and that we had not been one of the top five when all votes were considered. He stated that he had ranked us very highly for his part, but that the other voters had not. He stated that we also had not ranked sixth, and if so he would have expanded the number of bidders to six. Finally, he stated that he was unwilling to expand the bid list enough to include us because there were contractors that ranked between us and the top five, who he refused to have as a bidder.

24. When I asked why he felt bound to invite contractors in order of this ranking, he explained that he was bound to the process that was set in motion by the original advertisement in SCBO on July 2, 2014 because public money would be paying specifically for the site work.

25. I did not see how this could be true when Mr. Fish had just stated he had the discretion to expand the bid list but had decided not to. Mr. Fish ended the conversation by saying there would be other contracts on this project that perhaps we could bid. We ended the conversation.

26. We subsequently obtained documents that revealed we ranked seventh out of all of the bidders who submitted prequalifications, and had scored 93-94% of the points scored by contractors invited to bid the job. I believe this shows we were not only minimally qualified, we were an academic "A" on points but we were still somehow excluded from bidding, as were other extremely capable local companies.

27. This conversation with Mr. Fish was the first indication that I had of any public funds being involved with the *site work* for this project as no official notice to the public or to potential bidders had ever stated that fact.

28. Accordingly, Richardson Construction Company hired an attorney to obtain information on the sources of public funding through the Freedom of Information Act, and to write a detailed letter to Mr. Fish explaining that if public funds were involved, the procurement of the site work would have to comply with the State and/or County procurement codes, which it clearly had not.

29. I hand delivered the letter to Mr. Fish at his Chester office on November 5, 2014. Mr. Fish welcomed my visit. He explained again that there was likely nothing he could do, read the letter briefly while we met, and told me that he fully expected the bid process to be contested. He said that he would consider the letter, pass it on to others within his team that needed to see it, and would let me know if anything could be done.

30. Hearing nothing back from Mr. Fish, and upon receipt of the public money Award Documents showing the source, nature and instructions for use of the state money committed to this project by the Department of Commerce, we filed and later supplemented our protests to Chester County and the State of South Carolina which both, by contract and statute, are responsible for the administration and dispensation of the state money awarded to Chester County for the acquisition and site preparation of the Giti Plant site.

31. I instructed my lawyers to maintain communication with both Chester and the State that we sought the correction of the seriously flawed bid solicitation process, or total lack thereof. I would much prefer if this could be done with as little fanfare, delay or consternation as possible and without litigation. I believed that the issue we raised was simple – State Money was paying for the job, so the State Procurement Code must apply to the expenditure of that money.

32. I have been surprised by the resistance we have subsequently encountered when asking the government to handle and disburse the public's money in compliance with the duly

enacted statutes governing the expenditure.

33. Richardson Construction Company has acted immediately upon each fact as we have been able to discover them, and would have acted sooner to alert all parties of the problems with the process if the same had not been concealed – whether purposefully or inadvertently.

34. I am further informed and believed that the correction of the many errors and the failure to follow any legal procurement process can be **accomplished in 20 days or less by advertising and bidding the project according to the competitive sealed bid procedures in the procurement code. If that were done immediately, the project would be delayed less than one week from its originally anticipated (and publicly stated) start date of “the first of the year.”** (Chester County Supervisor, Carlisle Roddey, quoted in Rock Hill Herald, Tuesday December 9, 2014).

35. Had this been done when we first raised the issue, the procurement could be completed and a contract could have been awarded by or before Monday of next week, substantially earlier than the anticipated start date.

36. Chester County stated in its decision denying our protest that they believed the project is in exigent circumstances that would warrant proceeding with opening bids and awarding the contract prior to resolution of the case.

37. If that occurs, Richardson Construction Company will be deprived forever of the opportunity to bid on this very substantial and rare project and be irreparably harmed.

38. The State, County and Giti will also be irreparably harmed by depriving themselves and the citizens and stockholders they represent, of the opportunity for increased competition and likely lower pricing for this substantially expensive project and a more efficient use of the public money that is being expended for their benefit.

39. I have read the state money award documents and they make it clear that the state funds are in no danger of being forfeited due to the roughly 20 day delay bid according to code would cause.

40. Earlier this year, Richardson was the 2<sup>nd</sup> lowest bidder on a substantial sewer project to serve the Fairfield Commerce Park. Fairfield County awarded the job to Richardson after concluding that the low bidder was non-responsible. Both the State Code and Chester County's Procurement Policy give the procuring agency the same rights to do as Fairfield did if they find clear evidence why a bid should be rejected for non-responsibility.

41. Because of their statutory right to contract with only responsible bidders, together with the bonding requirements in the procurement codes (for projects of this size), the State, Chester and Giti will be protected from doing business with unqualified bidders who cannot bid bond a job of this size, and protected against catastrophic failure of the successful contractor, by the payment and performance bond. – the same way the State and County are protected on every other expenditure of this nature.

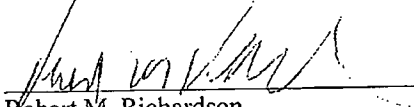
42. The process employed by Chester to date actually provides less protections than a bid under the State code because bid bonds were not required for the current solicitation, but would be required under the code.

43. Upon information and estimation, and according to my extensive experience for 43 years in this business, this project will be approximately \$12,000,000 - \$15,000,000.00 in magnitude.

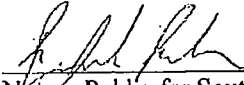
44. The State, its various agencies, and a number of Counties bid jobs of that magnitude on a regular basis (schools, roads, bridges, airports) according to the standard competitive sealed bidding procedure we maintain is required in this case.



45. In the past, I have bid and contracted for government projects through alternative or special procedures when the circumstances justified such. These circumstances have included projects that were truly emergencies such as Hurricane Hugo clean-up contracts in 1989, jobs that are too large, OR too small for most contractors to be interested, and jobs that require specialized equipment, licensing or authorization (such as authorization to work on military installations). I can identify no special circumstance of this job that warrants or requires an originally invented and continuously evolving and exclusionary bid process in violation of the long-standing, statutory, judicially tested, competitive sealed bid process in the State Procurement Code.

  
Robert M. Richardson

Sworn to and Subscribed before Me  
This 12th Day of December 2014.

  
Notary Public for South Carolina

My Commission Expires: 12/20/2015



STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP12-565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

**AFFIDAVIT OF  
R. JOSEPH RICHARDSON**

ROBERT M. RICHARDSON, after being duly sworn, personally appears before and deposes and says that:

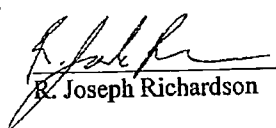
1. Affiant's name is R. Joseph Richardson.
2. Affiant makes this Affidavit in support of Plaintiff Richardson Construction Company's ("Richardson") Application and Motion for a Temporary Injunction.
3. Affiant is the Vice-President of Richardson.
4. Affiant has personal knowledge of the information set forth in this Affidavit.
5. I called George Dillard (the assistant project manager at Gresham Smith for the Giti project) in early September to ask for an update on the project. I asked when the project would be out for bids, when was the anticipated start date and any other information about the project he would be willing to share with me.
6. Mr. Dillard told me that the blueprints and bid packages would be available in late October for a bid sometime in November, but that certain problems had come to light which may force Giti to allow more bidders to bid, but that they hoped they would be able to keep the number

of bidders limited to five and that Mr. Fish had been adamant about having us as one of the bidders.

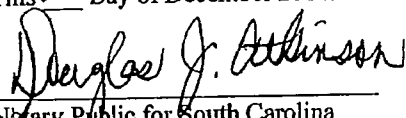
7. Mr. Dillard relayed that Mr. Fish had been pleased with Richardsdon's performance at Bridgestone Firestone and had insisted Richardson be invited to bid the job.

8. Mr. Dillard was unable to share much more project information with me, but stated that the project would likely begin in January.

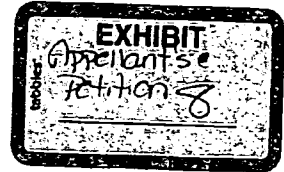
9. Mr. Dillard confirmed that he had received our pre-qualification response package from Alliance Engineering when they assumed the role of project engineer, and that we did not need to re-transmit our pre-qualification package.

  
R. Joseph Richardson

Sworn to and Subscribed before Me  
This 12 Day of December 2014.

  
Notary Public for South Carolina

My Commission Expires: 3-9-2021



STATE OF SOUTH CAROLINA  
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2014-CP-<sup>12-</sup>00565

RICHARDSON CONSTRUCTION  
COMPANY,

Plaintiff,

vs.

CHESTER COUNTY,

Defendant.

APPLICATION AND MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND TEMPORARY INJUNCTION

CLERK OF COURT  
JUL 1 10 51 AM '14

TO: CHESTER COUNTY

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Plaintiff Richardson Construction Company ("Richardson") moves the Court for a temporary restraining order and temporary injunction and will show the Court the following:

1. The Plaintiff, Richardson Construction Company ("Richardson"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
2. Richardson is a licensed contractor specializing in site construction.
3. The Defendant, Chester County, is a political subdivision of the State of South Carolina located in Chester County, South Carolina.
4. The acts and omissions complained of herein occurred in Chester County, South Carolina.

11729755-1

5. Pursuant to S.C. Code Ann. §11-35-50, Chester County has adopted a procurement policy governing contracts and procurements entered into by Chester County ("Chester County Policy").

6. The South Carolina Consolidated Procurement Code, S.C. Code Ann. §11-35-10, *et seq.* ("Code"), governs every procurement and expenditure of funds by the State of South Carolina acting through a governmental body. S.C. CODE ANN. §11-35-40(2).

7. Chester County was given an award of State public funds totaling \$36,325,000 for use to provide incentives to Giti Tire Manufacturing (USA) Ltd. ("Giti") to build a tire manufacturing plant in Chester County, South Carolina. Giti did in fact decide to construct a tire manufacturing plant in Chester County ("Project").

8. The \$36,325,000 of public funds for the Project was awarded from the South Carolina Coordinating Council for Economic Development ("Council") to Chester County for the Project in a contract dated June 5, 2014. *See* Ex. A to the Application and Motion for Temporary Restraining Order and Temporary Injunction.

9. Section 8 of the Grant Award Agreements (Ex. A) requires "the selection of [the] Contractor by the Grantee must follow applicable procurement laws, regulations and guidelines." Furthermore, the Performance Agreement (also part of Ex. A) between Chester County, the State and Giti states that the selection of contractors for the Project "must take place in accordance with the Chester County procurement ordinance." ¶5.0.

10. On July 2, 2014, an advertisement was published in South Carolina Business Opportunities seeking Contractor's Prequalification Statements for the provision of mass site work services for the Project. *See* Ex. B.

11. Richardson timely submitted a completed Prequalification Statement. *See* Ex. C.
12. Richardson is a licensed contractor and is otherwise qualified and capable of performing the work on the Project and otherwise complying with all contract requirements for the project. Among other qualifications, Richardson has a \$75,000,000.00 bonding capacity.
13. On October 30, 2014, Richardson received notice that it would not be permitted to submit a bid for the Project because it was not ranked in the top five of firms that submitted Prequalification Statements when the firms were ranked from most qualified to least qualified using a point system.
14. The elimination of qualified prospective bidders from the bidding process violates both the Code and the Chester County Policy.
15. Richardson timely filed a bid protest with the Chester County Chief Procurement Officer ("CPO") on November 12, 2014. *See* Ex. D. Richardson filed a supplement to its protest to the Chester County CPO on November 20, 2014. *See* Ex. E.
16. The Chester County CPO conducted an administrative review of Richardson's protest on November 21, 2014.
17. On November 24, 2014, Richardson received notice of the Chester County CPO's decision on its protest. In its response to Richardson's protest, the Chester County CPO concludes that the Chester County Policy, not the Code, governs the Project and that all procedures followed in the procurement of mass site work services for the Project were proper under the provisions of the Chester County Policy. *See* Ex. F.
18. The Chester County CPO's decision that the Project is governed by the Chester County Policy is incorrect.

19. The South Carolina Consolidated Procurement Code, S.C. Code Ann. §11-35-10, *et seq.*, governs every procurement and expenditure of funds by the State of South Carolina acting through a governmental body. S.C. CODE ANN. §11-35-40(2).

20. The Code does not apply to grants, as defined by the Code. §11-35-40(2). The term "grant" is defined by the Code as "the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law." §11-35-310(19). The Code further provides that the definition of a grant "does not include an award, the primary purpose of which is to procure a specified end product, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract." *Id.*

21. The issuance of public funds for the Project by the Council to Chester County constitutes an *award* under the Code, not a grant. *See* Ex. A. Therefore, the Project is subject to the requirements of the Code.

22. The decision to deny Richardson the right to submit a bid for the Project violates the Code, including, but not limited to, §11-35-3023(B) of the Code.

23. Even if the Chester County CPO were correct that the Project is governed by the Chester County Policy rather than the Code, the CPO's decision that the procedures followed for the procurement of mass site work services for the Project comply with the requirements of the Chester County Policy is incorrect.

24. The Chester County Policy requires that, with certain limited exceptions that are inapplicable to the Project, all county contracts must be awarded by competitive sealed bidding. *See* Ex. G, PP-040, at III.E. The Chester County Policy does not authorize the elimination of

qualified prospective bidders through the use of a prequalification process. *See* Ex. G.

25. Furthermore, the section of the policy which the CPO relied upon, PP-140, Solicitation Outline at ¶9.01 (p.12) does not apply to bidding; it applies to Requests for proposals. The part of the Policy that applies to bidding is PP-150 "Uniform Solicitation format INVITATION FOR BID (IFB)" (emphasis in original) which does not contain the same provision as PP-140.

26. Therefore, the decision to deny Richardson the right to submit a bid for the Project violates the Chester County Policy.

27. Richardson is entitled to an Order of this Court declaring that the Project is subject to the requirements of the South Carolina Consolidated Procurement Code and that, pursuant to the Code, Richardson must be permitted to submit a bid for the mass site work services contract for the Project. If the Court determines that the Project is governed by the Chester County Policy rather than the Code, Richardson is entitled to an Order declaring that it must be permitted to submit a bid for the mass site work services contract for the Project pursuant to the Chester County Policy.

28. Richardson is entitled to temporary and permanent injunctive relief preventing the award of a mass site work services contract for the Project, and requiring: (1) the Project to be re-bid; (2) Richardson to be allowed to submit a bid; (3) the bids to be opened publicly and (4) the contract to be awarded to the lowest responsive responsible bidder.

29. For the reasons explained above, Richardson has a substantial likelihood of succeeding on the merits of this action.

30. Richardson will suffer irreparable injury for which no other adequate legal



remedy is available if a contract for the mass site work services for the Project is awarded without permitting Richardson to submit a bid for the contract that is duly considered prior to the issuance of an award of the contract.

31. Richardson will lose the opportunity to generate profit from the Project, as well as lose the opportunity to generate revenue to pay the overhead of its company.

32. Chester County will not suffer irreparable damage by the granting of the injunctive relief requested herein and will suffer no other countervailing harm by the granting of such injunctive relief.

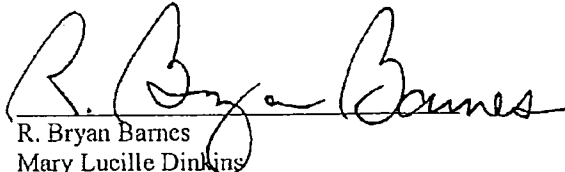
33. Giti will not suffer irreparable damage by the granting of the injunctive relief requested herein.

34. The basis of this Application and Motion, in addition to the foregoing, will be the Verified Complaint filed simultaneously herewith, plus such additional law and argument of counsel as may be appropriate.

NOW, THEREFORE, Plaintiff respectfully requests that the Court issue a temporary restraining order and temporary injunction restraining and enjoining Defendant, its officers, agents, servants and employees and upon those persons acting in concert or participation with them, from opening bids, identifying a low bidder, awarding a contract or issuing a notice to proceed for the Project and upon the allegations of the Complaint filed in this matter being finally adjudged, requiring (1) the Project to be re-bid; (2) Richardson to be allowed to submit a bid; (3) the bids to be opened publicly and (4) the contract to be awarded to the lowest responsive responsible bidder. To do otherwise will cause immediate and irreparable injury, loss and damage to Plaintiff.

11729755-1

Respectfully Submitted,



R. Bryan Barnes  
Mary Lucille Dinkins  
ROGERS TOWNSEND & THOMAS, PC  
Post Office Box 100200  
220 Executive Center Drive  
Columbia, South Carolina 29202-3200  
(803) 771-7900  
Attorneys for the Plaintiff

December 1, 2014

CLERK OF COURT  
JAN DEC - 1 A D 51  
CLERK

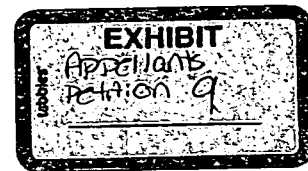
11729755-1

## EXHIBITS TO TRO MOTION

### TAB

- A. Grant Award Agreement
- B. SCBO Advertisement
- C. Richardson's Prequalification Statement
- D. Richardson's Protest to Chester County
- E. Supplement to Richardson's Protest to Chester County
- F. Chester County's Response to Richardson's Protest to Chester County
- G. Chester County's Procurement Policy

2014 DEC -1 A 10:51  
IN THE COURT  
OF COMMON PLEAS  
CHESTER COUNTY, PA



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

The Honorable Lee S. Alford, Circuit Court Judge  
Case No. 14-CP-12-565

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Richardson Construction Company.....Appellant

vs.

Chester County .....Respondent

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ORDER

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Appellant has filed a petition for temporary injunction prohibiting Chester County from opening bids related to a publicly funded multimillion dollar construction project in Chester County. Specifically, Appellant is seeking temporary injunctive relief enjoining Respondent from opening bids and awarding a contract for mass site work services for the construction of a Giti Tire Manufacturing (USA) Ltd. tire plant in Chester County, South Carolina ("Project").

The verified complaint and affidavits provide evidence of the following facts:

Public funds of over \$36 million have been made available by the South Carolina Coordinating Council for Economic Development to assist with the costs of land acquisition, site preparation, and site infrastructure improvements for the Project. An advertisement was published in South Carolina Business Opportunities seeking Contractor's Prequalification

Statements for the provision of mass site work services for the Project. Appellant timely submitted a Prequalification Statement in response to the advertisement. Prequalification Statements submitted by various contractors were ranked using a point system, and the top five ranked contractors were issued invitations to bid and were permitted to submit bids for the Project. Appellant was not issued an invitation to bid and was not permitted to submit a bid for the Project because it was not one of the top five ranked contractors.

Appellant contends that the decision to prevent it from submitting a bid for the Project violates governmental procurement rules and that it must be permitted to submit a bid for the Project pursuant to those rules. Appellant filed a Verified Complaint in this matter on December 1, 2014. Appellant also filed an Application and Motion for a Temporary Restraining Order and a Temporary Injunction with the Verified Complaint. On December 1, 2014, the Honorable Brian Gibbons issued a Temporary Restraining Order enjoining Chester County from opening bids and awarding a contract for mass site work services for the Project. Appellants thereafter filed affidavits of Robert M. Richardson and R. Joseph Richardson.

Appellant's Motion for a Temporary Injunction was heard by the Honorable Lee S. Alford on December 12, 2014, and the motion was denied. Appellant filed a notice of appeal the same day. With its notice of appeal it filed a petition for a temporary injunction.

I am satisfied that, if a temporary injunction is not issued, Appellant will suffer irreparable harm for which there is no adequate remedy at law because Appellant will forever miss the opportunity to obtain the revenue, profit, experience, and enhanced reputation that would ensue from performing the mass site work for the Project. In addition, if Appellant's bid turns out to be the lowest bid, the public would be deprived of the benefit of the savings from this construction project.

There is a substantial likelihood Appellant will prevail on appeal and that, specifically, the Project is subject to the requirements of the South Carolina Consolidated Procurement Code ("Code") and that the elimination of qualified prospective bidders from the bidding process for the Project violates the Code. There is also a substantial likelihood that the prequalification process used to eliminate qualified prospective bidders from the bidding process violates the Chester County Purchasing Policy and Procedure Manual ("Chester Policy").

There is also a substantial likelihood the Project will have to be re-bid and that Appellant will be permitted to submit a bid under both the Code and the Chester Policy.

There is a substantial likelihood that absent this order Chester County will open the five bids and award a contract for mass site work. Once that occurs, Appellant's case and the possibility that the public could save money will become moot.

Accordingly, Appellant has made a prima facie showing that it is entitled to injunctive relief requiring the Project to be re-bid in accordance with governmental procurement rules and requiring that Appellant be permitted to submit a bid.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. That Respondent is hereby restrained and enjoined from opening bids, identifying an apparent low bidder, awarding a contract, or issuing a notice to proceed with the work of the mass site work contract for the Project to any person or entity pending further hearing on this matter;
2. That the parties shall appear before the Court on \_\_\_\_\_, 20\_\_, for oral argument; and

3. That this Order shall be effective and enforced upon the posting of a Bond in the penal amount of \$\_\_\_\_\_ on behalf of Appellant in favor of Responded, conditioned as required by law.

EXECUTED this \_\_\_\_\_ day of December 2014 at \_\_\_\_ o'clock in the a.m./p.m.

\_\_\_\_\_  
For the Court

Columbia, South Carolina

cc:

The Honorable Lee S. Alford

The Honorable Sue Carpenter, Clerk of Court

R. Bryan Barnes, Esquire

Joanie Winters, Esquire

**CERTIFICATE OF SERVICE BY MAIL**

Case No. 14-CP-12-565

I, the undersigned employee with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on December 19, 2014, at the following address:

**Document:**

Appellant's Petition For a Stay or Temporary Injunction

**RECEIVED**

DEC 19 2014

**Counsel Served:**

Joanie Winters, Esquire  
Winters Law Firm  
105 Main Street  
Chester, SC 29706

**SC Court of Appeals**

  
\_\_\_\_\_  
Attorney for Appellant



# The South Carolina Court of Appeals

Richardson Construction Co., Appellant,

v.

Chester County, Respondent

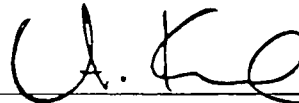
Appellate Case No. 2014-002687

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## ORDER

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Appellant's petition for a stay or temporary injunction is denied.



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FOR THE COURT

Columbia, South Carolina

cc:

Robert P. Wood, Esquire

Joanie Winters, Esquire

**FILED**

December 22, 2014

VCA

# The South Carolina Court of Appeals

Richardson Construction Co., Appellant,

v.

Chester County, Respondent

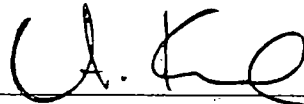
Appellate Case No. 2014-002687

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## ORDER

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On Friday, December 19, 2014, this court temporarily granted Appellant's petition for a stay or a temporary injunction in order to allow the court adequate time to review Appellant's filings. After careful consideration, this court denied Appellant's petition. This order is to clarify that because this court has denied Appellant's petition, the temporary stay is lifted immediately.



---

FOR THE COURT

Columbia, South Carolina

cc:

Robert P. Wood, Esquire  
Joanie Winters, Esquire

**FILED**

December 22, 2014  
VCA

Site Mass Grading Package  
Giti Tire Manufacturing (USA), LTD.  
Tire Manufacturing Plant – Phase 1  
Chester County, South Carolina  
GS&P Project No.: 40303.00

## **INSTRUCTIONS TO BIDDERS**

Document 00 2113 – Page 4 of 6

2. Make Bids upon the forms provided therefore, properly executed and with all items filled out.
3. Do not change the wording of the Bid Form, and do not attach additional text that affects the Bid.
4. Unauthorized conditions, limitations, or provisions attached to the Bid shall be cause for rejection of the proposal.
5. Electronic Bid modifications will not be considered.
6. Bids received after the time fixed for receiving them will not be considered.
7. Late bids will be returned to the sender unopened.
8. Each bid shall be addressed to the Owner and shall be delivered as stated above on or before the date and time stated in the Advertisement for Bids.
9. Each bid shall be enclosed in a sealed envelope bearing the title of the Work, the name of the Bidder and address, Bidder's license number, classification of license, limits of classification if relevant, and the date and hour of the bid opening.
10. It is the sole responsibility of the bidder to see that its bid is received on time.
11. If the Bid is sent through the mail or other delivery method, enclose the sealed envelope containing the Bid documents within a separate envelope with the notation "Bid Enclosed" on the outer envelope.

C. Confidential Information: Bidders shall visibly mark as "Confidential" each part of their Bid that they consider to contain proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section §11-35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute are:

1. Customer lists;
2. Design recommendations and identification of prospective problem areas under an Invitation for Bid;
3. Design concepts, including methods and procedures;
4. Biographical data on key employees of Bidder.

### **1.9 BIDS**

- A. Submit two copies bearing original signatures.
- B. Bids transmitted by facsimile or electronic means will not be considered.
- C. Withdrawal of Bid:
  1. Bidder may withdraw its Bid, either personally or by written request, received by the Chester County Office of Purchasing at any time before the scheduled time for receiving Bids.
  2. Withdrawal requests transmitted by facsimile or electronic means will not be considered.
  3. Bidders may not withdraw Bids for a period of 45 days after the date set for receiving thereof. Bids are be subject to acceptance by the Owner during this period.

Site Mass Grading Package  
Giti Tire Manufacturing (USA), LTD.  
Tire Manufacturing Plant – Phase 1  
Chester County, South Carolina  
GS&P Project No.: 40303.00

## **INSTRUCTIONS TO BIDDERS**

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2. Make Bids upon the forms provided therefore, properly executed and with all items filled out.
3. Do not change the wording of the Bid Form, and do not attach additional text that affects the Bid.
4. Unauthorized conditions, limitations, or provisions attached to the Bid shall be cause for rejection of the proposal.
5. Electronic Bid modifications will not be considered.
6. Bids received after the time fixed for receiving them will not be considered.
7. Late bids will be returned to the sender unopened.
8. Each bid shall be addressed to the Owner and shall be delivered as stated above on or before the date and time stated in the Advertisement for Bids.
9. Each bid shall be enclosed in a sealed envelope bearing the title of the Work, the name of the Bidder and address, Bidder's license number, classification of license, limits of classification if relevant, and the date and hour of the bid opening.
10. It is the sole responsibility of the bidder to see that its bid is received on time.
11. If the Bid is sent through the mail or other delivery method, enclose the sealed envelope containing the Bid documents within a separate envelope with the notation "Bid Enclosed" on the outer envelope.

C. Confidential Information: Bidders shall visibly mark as "Confidential" each part of their Bid that they consider to contain proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section §11-35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute are:

1. Customer lists;
2. Design recommendations and identification of prospective problem areas under an Invitation for Bid;
3. Design concepts, including methods and procedures;
4. Biographical data on key employees of Bidder.

### **1.9 BIDS**

- A. Submit two copies bearing original signatures.
- B. Bids transmitted by facsimile or electronic means will not be considered.
- C. Withdrawal of Bid:
  1. Bidder may withdraw its Bid, either personally or by written request, received by the Chester County Office of Purchasing at any time before the scheduled time for receiving Bids.
  2. Withdrawal requests transmitted by facsimile or electronic means will not be considered.
  3. Bidders may not withdraw Bids for a period of 45 days after the date set for receiving thereof. Bids are subject to acceptance by the Owner during this period.

**INSTRUCTIONS TO BIDDERS**

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- D. Chester County, South Carolina will receive on behalf of the Owner. Sealed proposals from invited bidders will be accepted until 3:00 P.M. on Monday, November 17, 2014, at the Chester County Office of Purchasing, 1476 J.A. Cochran Bypass, Chester, SC 29706. Bids will be opened and publicly read aloud in the Conference Room of the Chester County Government Complex, 1476 J.A. Cochran Bypass, Chester, SC 29706.
  - E. Award of Contract: It is the intent of the Owner to award a contract for construction to the Bidder who has proposed the lowest Contract Sum and who has complied with requirements for Bidding. The Chester County Office of Purchasing will review bids for responsiveness and advise the Owner as to which bids are acceptable under the State's agreement with the Owner.
    - 1. The Owner reserves the right to negotiate with the most responsive Bidder before awarding the contract.
  - F. Evidence of Competency: Any Bidder may be required to provide evidence satisfactory to the Chester County Office of Purchasing and the Owner that it and its proposed Subcontractors have sufficient experience in the types of work called for to complete the Work of Contract in a satisfactory manner.
- 1.10 PROTESTS**
- A. Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest in writing within fifteen (15) days of the date of issue of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award shall protest within fifteen (15) days of the date of award intent is posted in accordance with this code. A protest shall be in writing, submitted to the Contracts and Procurement Director, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided {§11-35-4210} Direct all correspondence to Director Contracts and Procurement, P. O. Drawer 580, Chester, SC 29706.
- 1.11 EXECUTION OF AGREEMENT**
- A. The Notice of Award issued to the successful Bidder will be accompanied by the required number of unexecuted counterparts of the Agreement including all other Contract Forms and Agreements.
  - B. The form of Agreement, which the successful Bidder will be required to execute, is included in the Bidding Documents.
  - C. The Bidder to whom the Contract is awarded by the Owner shall, within 15 days after notice of award and receipt of Agreement forms from the Owner, sign and deliver to the Owner all required copies.
  - D. At or before delivery of the signed Agreement, the Contractor shall deliver to the Owner the Labor and Materials Payment Bond, the Performance Bond, and the policies of insurance or insurance certificates as required by the Bidding Documents.
  - E. The Chester County Office of Purchasing and Owner must approve all bonds and policies of insurance before the successful Bidder can proceed with the Work.

## **INSTRUCTIONS TO BIDDERS**

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Document 00 2113 – Page 5 of 6

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  - 1. The Owner reserves the right to negotiate with the most responsive Bidder before awarding the contract.
- F. Evidence of Competency: Any Bidder may be required to provide evidence satisfactory to the Chester County Office of Purchasing and the Owner that it and its proposed Subcontractors have sufficient experience in the types of work called for to complete the Work of Contract in a satisfactory manner.

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- D. At or before delivery of the signed Agreement, the Contractor shall deliver to the Owner the Labor and Materials Payment Bond, the Performance Bond, and the policies of insurance or insurance certificates as required by the Bidding Documents.
- E. The Chester County Office of Purchasing and Owner must approve all bonds and policies of insurance before the successful Bidder can proceed with the Work.

Site Mass Grading Package  
Giti Tire Manufacturing (USA), LTD.  
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## **INSTRUCTIONS TO BIDDERS**

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- F. Failure or refusal to furnish bonds or insurance policies or certificates in a form satisfactory to the Owner shall subject the Bidder to loss of time from the allowable construction period equal to the time of delay in furnishing the required material.

### **1.12 CONTRACT TIME**

- A. The Agreement will include a stipulation that the Work be substantially completed by May 15, 2015.

END OF DOCUMENT

Site Mass Grading Package  
Giti Tire Manufacturing (USA), LTD.  
Tire Manufacturing Plant – Phase 1  
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## **INSTRUCTIONS TO BIDDERS**

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**Document 00 2113 – Page 6 of 6**

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### **1.12 CONTRACT TIME**

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END OF DOCUMENT



# The South Carolina Court of Appeals

Richardson Construction Co., Appellant,

v.

Chester County, Respondent

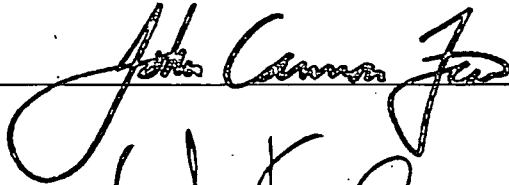
Appellate Case No. 2014-002687

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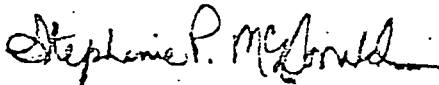
## ORDER

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Appellant has filed a petition to rehear this court's order denying Appellant's motion for a stay or injunction to prevent Respondent from opening bids and awarding a contract for construction of the Giti Tire Manufacturing plant in Chester County. After careful consideration of the petition, this court is unable to discover that any material fact or principle of law has been either overlooked or disregarded. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Columbia, South Carolina

**FILED**

December 23, 2014