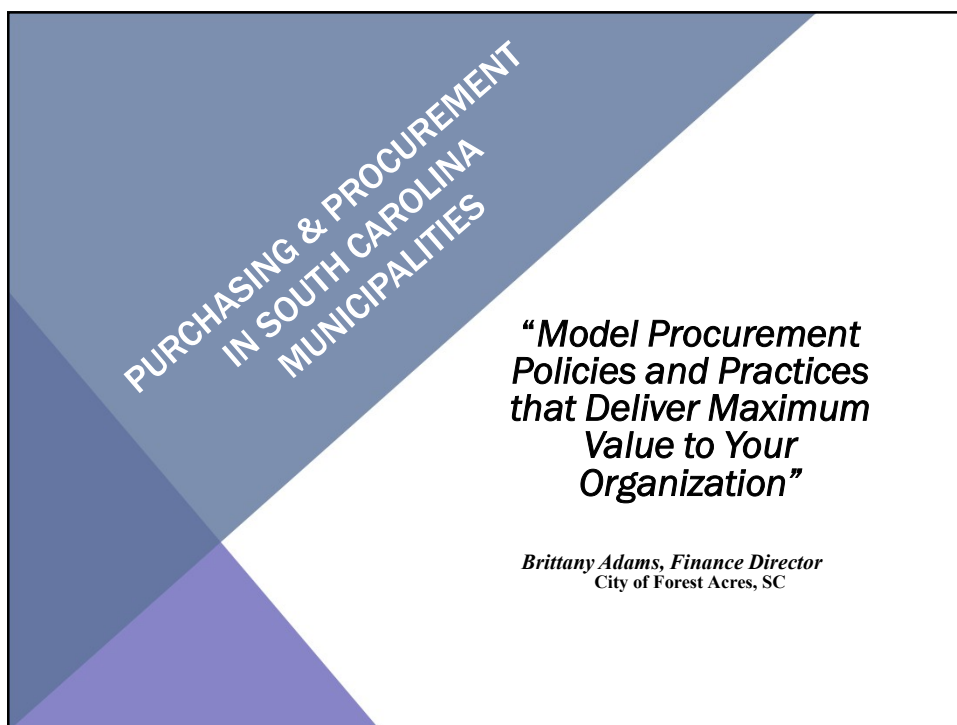


The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice and does not necessarily reflect the opinion or policy position of the Municipal Association of South Carolina. Consult your attorney for advice concerning specific situations.



## TRAINING OBJECTIVES

- General Overview
- Model Procurement Practices
- Procurement Methods & Source Selection
- Dos & Don'ts
- Counting the Costs (The Total Cost)
- Tips on How & When to Address Exceptions
- Unauthorized Procurements
- State Contracts, Cooperative Purchasing and Intergovernmental Agreements
- Ways to Ensure Transparency throughout the Procurement Process
- Explore Legal, Ethical and Moral Implications
- Conflict of Interest Tips
- Sole Sources/Emergencies
- Values & Guiding Principles for the Procurement Profession

## \*\*\*DISCLAIMER\*\*\*

Any information shared by City of Forest Acres procurement officials shall not supersede or replace each public entities' own procurement procedures, laws, rules or regulations.

Nothing in this presentation constitutes legal advice.

Please seek procurement and/or legal advice from your own agency or Public entity.

## DEFINITIONS

### What is “procurement”?

- Procurement: Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, and salvage and disposal operations (NIGP, 2008).

## PROCUREMENT CODE APPLICATION

SC Procurement Code 11-35-40(2) Application of Procurement Code.

- (2) Application to State Procurement. This code applies to **every** procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations). It also shall apply to the disposal of state supplies as provided in Article 15 (Supply Management). No state agency or subdivision thereof may sell, lease, or otherwise alienate or obligate telecommunications and information technology infrastructure of the State by temporary proviso and unless provided for in the general laws of the State.

## PROCUREMENT CODE APPLICATION

What does this mean?

- Procurement Code applies regardless of fund source
- Applies to procurements or expenditures
- Code applies even if there is not a resulting expenditure (i.e. Revenue Generating Contracts, ex. Municipality service where the customer pays directly to awarded contractor)
- Irrespective of the Source of Funds (Foundations, Donors, etc.)
- Does not apply to gifts, to the issuance of grants, or to contracts between public procurement units as provided in Article 19

## PROCUREMENT CODE APPLICATION

SC Procurement Code 11-35-50. Political subdivisions required to develop and adopt procurement laws.

All political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983. The State Fiscal Accountability Authority, in cooperation with the Procurement Policy Committee and subdivisions concerned, shall create a task force to draft model ordinances, regulations, and manuals for consideration by the political subdivisions. The expenses of the task force shall be funded by the General Assembly. The task force shall complete its work no later than January 1, 1982. A political subdivision's failure to adopt appropriate ordinances, procedures, or policies of procurement is not subject to the legal remedies provided in this code.

**HISTORY:** 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the "Budget and Control Board", the "State Budget and Control Board" or the "board" were changed to the "State Fiscal Accountability Authority", the "authority", or the "Division of Procurement Services" of the "State Fiscal Accountability Authority", pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(B), effective July 1, 2015.

## FREQUENTLY USED PROCUREMENT METHODS

- ☐ Requests for Quotes
- ☐ Request for Proposals
- ☐ Invitation for Bids (IFBs)
- ☐ Competitive Best Value Bids
- ☐ Request for Qualifications
- ☐ Emergency Procurements
- ☐ Sole Source Procurements
- ☐ Reverse Auctions
- ☐ Various Construction Procurement Methods
- ☐ Request for Information or Request for Expression of Ideas

## FREQUENTLY USED PROCUREMENT METHODS

**Request for Quotation (RFQ):** A small order amount purchasing method. Generally used for small orders under a certain dollar threshold.

Evaluation and recommendation for award should be based on the quotation that best meets price, quality, delivery, service, past performance and reliability. (NIGP)

**Competitive Best Value Bidding (CBVB)** see 11-35-1528 – SC Procurement Code: Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific supplies, services, or information technology based on pre-determined criteria identified by the State. The best value bid must state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. **SC Consolidated Procurement Code**

## FREQUENTLY USED PROCUREMENT METHODS

**Request for Qualifications (RFQ):** A document which is issued by a procurement entity to obtain statements of the qualifications of potential development teams or individuals (i.e. consultants) to gauge potential competition in the marketplace, prior to issuing the solicitation.

**Invitation for Bids (IFBs):** a formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

National Institute of Governmental Purchasing (U.S.), Public Procurement Dictionary of Terms: The Comprehensive Reference for Public Purchasing Terms and Concepts (Herndon, VA: National Institute of Government Purchasing, 2010), Revised.

## FREQUENTLY USED PROCUREMENT METHODS

**Request for Proposal (RFP):** The document used to solicit proposals from potential providers for goods and services (Offerors). Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price prior to contract award. May include a provision for the negotiation of Best and Final Offers. Maybe a single step or multi-step process. Introduced in the Armed Services Procurements Act of 1962 as well as the Competition in Contracting Act of 1984.

**Reverse Auction:** An online auction in which sellers bid against each other to win a buyers business. Typically used to produce commodities from multiple pre-qualified providers. Also referred to as eAuction.

National Institute of Governmental Purchasing (U.S.), Public Procurement Dictionary of Terms: The Comprehensive Reference for Public Purchasing Terms and Concepts (Herndon, VA: National Institute of Government Purchasing, 2010), Revised.

## DEFINITION

### What is a contract?

- a binding agreement between two or more persons or parties; *especially* : one legally enforceable
- a business arrangement for the supply of goods or services
- a document describing the terms of a contract and/or conditions

[Merriam-Webster.com/dictionary](https://www.merriam-webster.com/dictionary)

## CONTRACTS

### What are two major components needed for a contract to be considered valid?

?

**DISCUSSION TOPIC:**

## **COST VS PRICE**

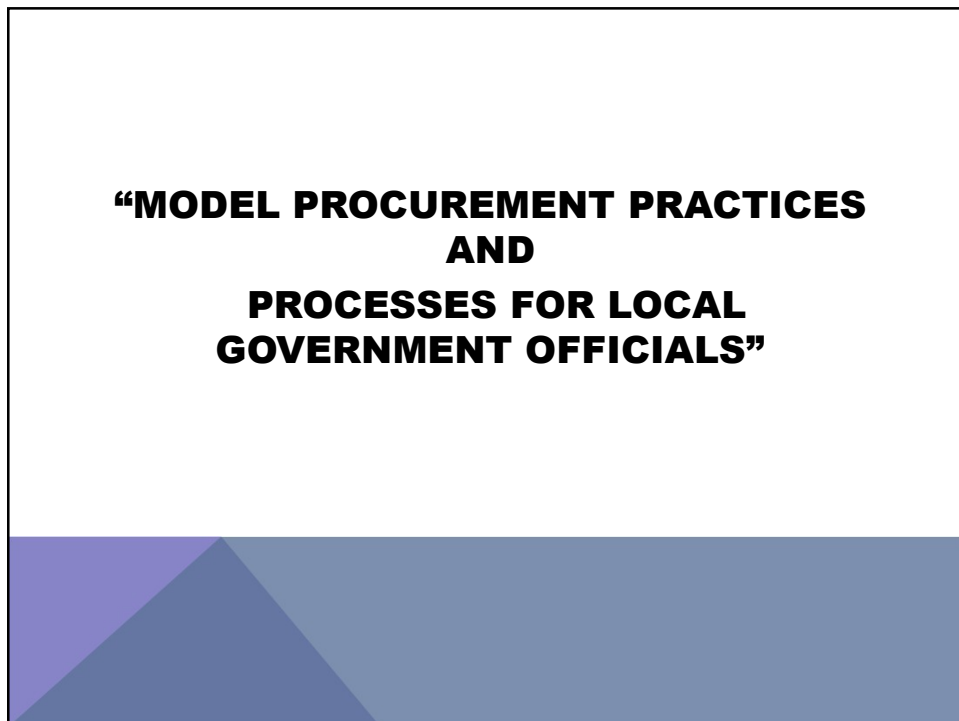
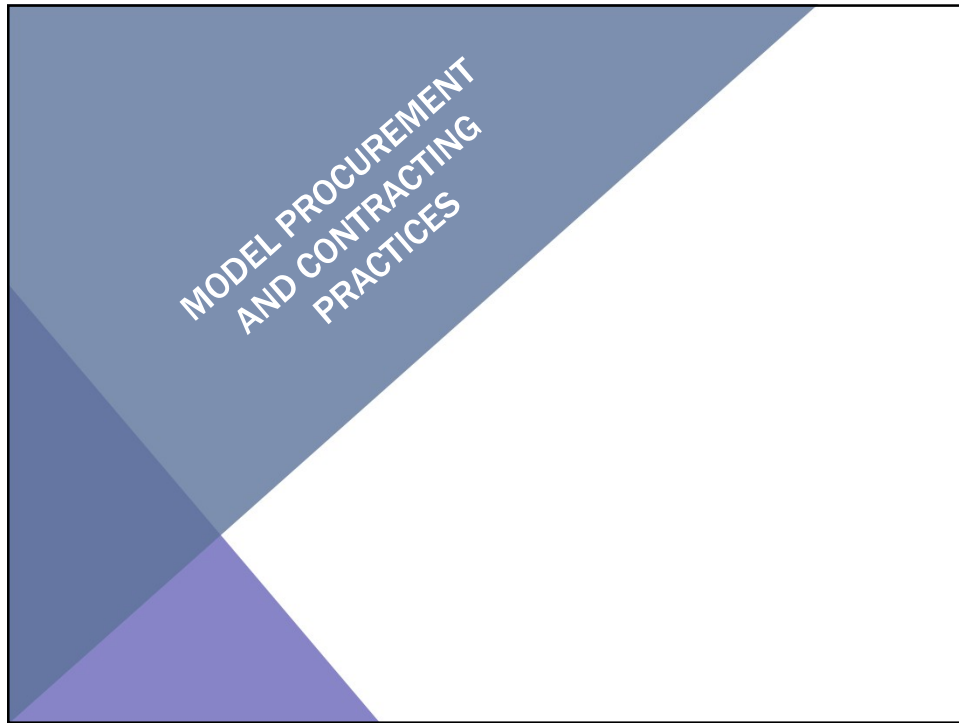
**DISCUSSION TOPIC:**

## **PAST EXPERIENCE VS PAST PERFORMANCE**



# ANY QUESTIONS???





## MODEL PROCUREMENT PRACTICES

- Ensure Transparency throughout the Procurement Process
- Established Simplified Procurement Procedures
- Streamline Terms & Conditions in Clear & Concise Language
- Train Procurement Professionals & Staff Members
- Good Communication is vital to a successful procurement project
- Establish & Maintain Appropriate Client/Vendor Relationships

## PRE-SOLICITATION ACTIVITIES

- Hold Fact Finding Meetings w/Internal Department to determine the "Need"
- Initial Research to Estimate the Cost of Project
- Meet with Other Cross-Functional Departments
- Prepare a Request for Information Announcement
- Draft the Solicitation Document
- Conduct a Pre-Solicitation Meeting w/Vendors

## **POST-SOLICITATION ACTIVITIES**

- Review all Responses
- Make Responsiveness & Responsibility Determinations
- Conduct Panel Meetings (Preliminary Briefing & Final for Scoring)
- Intent Period (Protest)
- Issue Award Notice
- Purchase Order Issuance
- Hold Debriefing Meeting
- Ensure Final Procurement File is Complete
- Next Phase – Contract Administration

## **POST AWARD: SURPLUS & DISPOSAL**

- Donations
- Trade-ins
- Public auctions
- Internet auctions
- Sealed bid auctions

## MODEL PROCUREMENT PRACTICES

Procurement is a vital part of any governmental organization and there is no “one size fits all” instruction guide for handling procurements...

*“Government size, level, functions, and personnel are some of the factors which may impact how we procure goods and services. The size and scope of the project, the knowledge level of the market and other varying conditions are also considered before selecting a particular procurement method. At all times one must follow the governing rules and regulations in your organization as well as all other applicable state, local, federal guidelines.”* Sandra Middleton

## UNAUTHORIZED PROCUREMENTS

- ☐ Any act obligating a public entity in a contract by any person or business without authority to do so by an appointment of delegation.
- ☐ EX: Authorizing any company to start work prior to a purchase order being released.
- ☐ EX: Increasing PO after it has been released without a change order and/or proper authorization from appropriate management officials & Purchasing.

## PROCUREMENT AWARENESS

- ☐ Unbalanced Bidding
- ☐ Leakage of Confidential or Internal Only Information
- ☐ Intentionally Excluding Qualified Bidders
- ☐ Conducting Discriminatory Practices during the Bid Process
- ☐ Accepting Late Bids or Modified Bids after Formal Bid Openings
- ☐ Inflated Needs for Items/Services
- ☐ Specifications Written to Favor a Particular Vendor/Contractor or Consultant

## PROCUREMENT AWARENESS

- ☐ Splitting Purchases to Fall Under a Certain Threshold
- ☐ Falsifying Info on Invoices
- ☐ Inappropriately Bundling of Items
- ☐ Including Unnecessary Line Items on Bids
- ☐ Releasing Restricted Bids, Rigged or Unfair Bid Specifications
- ☐ Biased Evaluation Criteria
- ☐ Purchases for Personal Use
- ☐ Price Fixing
- ☐ Product Substitution
- ☐ Bid Manipulation
- ☐ Bid Rotation

## PROCUREMENT AWARENESS (SOME GENERAL FEDERAL REQUIREMENTS)

- ☐ Maintain Records to detail the signification history of procurement 24 CFR 85.36(b)(9);
- ☐ Pre-qualified list of vendors/contractors, if used, must be a current list, developed through open solicitation process, include adequate number of qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period 24CFR 85.36(c)(4);.
- ☐ Exclude Contractors that develop or draft specifications, requirements, statements of work, etc. from competing for such procurement (24 CFR 84.43).
- ☐ Ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" (24CFR 85.35)

## PROCUREMENT AWARENESS (SOME GENERAL FEDERAL REQUIREMENTS)

- ☐ Ensure that there are written selection procedures for procurement transactions:
  - ☐ The purchase of unnecessary or duplicate items is avoided; Where appropriate, an analysis should be made of lease versus purchase alternatives (24 CFR 85.36(b)(4) and 84.44(a)(1)-(2));
  - ☐ Whenever possible, use Federal excess and surplus property or intergovernmental agreements for procurement or use of common goods and services...(24 CFR 85.36(b)(5) and (6));
  - ☐ All purchase orders (and contracts) are signed by the authorized official(s) of the subrecipient;
  - ☐ Items delivered and paid for are consistent with the purchase order and/or contract for the goods and services;

## **PROCUREMENT AWARENESS (SOME GENERAL FEDERAL REQUIREMENTS)**

- ☐ Timely payment to vendors once the order is delivered, inspected, accepted and payment authorized;
- ☐ A cost or price analysis performed for every procurement action...starting point is to perform an independent estimate before receiving bids or proposals (24 CFR 85.36(f) and 84.45);
- ☐ Profit or fee negotiated separately from price where competition is lacking or whenever a cost analysis is performed...(24 CFR 85.36(f)(2));

## **PROCUREMENT AWARENESS (SOME GENERAL FEDERAL REQUIREMENTS)**

- ☐ The list of provisions in 24 CFR 85.36(i) or 84.48, as applicable, to be included in any contracts;
- ☐ Ensure that Protest procedures are in place...;
- ☐ Documented system of contract administration for determining the adequacy of contractor performance (24 CFR 85.36(b)(2));
- ☐ Written Code of Conduct governing employees, officers, or agents engaged in the award or administration of contracts (24 CFR 85.36(b)(3) and 84.42).



# ANY QUESTIONS???



## CASE MENTIONS

- Berkeley County Embezzlement (Multi-million case)
- SC DHHS Technology Fraud (8.1 Million)

<https://www.thestate.com/news/politics-government/article311504600.html>

## SOLE SOURCE PROCUREMENT

Simply defined, a sole source must be:

- A unique item or service
- Only available from a single source
- Must be authorized by agency head or designee above the level of the procurement officer

Printed w/ Permission from  
The South Carolina Budget and Control Board, Audit & Certification Division

## SOLE SOURCE AUDIT EXCEPTIONS

- “This company installed the system and will be more familiar with the location of components and sensors in various buildings.”
- Company “is already familiar with the Site because we have employed them in the past for monitoring well samplings & reporting.”

Printed w/ Permission from  
The South Carolina Budget and Control Board, Audit & Certification Division

## SOLE SOURCE PROCUREMENT

- *“Sole sourcing is inappropriately used when used as a method of selecting a preferred vendor or contractor. Procurement officials should seek competition and ensure specs are not restrictive to maintain the integrity of the procurement process.”* Sandra A. Middleton

## EMERGENCY PROCUREMENT

- Unknown, unforeseen condition which creates a threat to public health, welfare, or safety that arise by reason of floods, epidemics, riots, equipment failure, fire loss, or such other reasons
- Condition must create an immediate and serious need

Printed w/Permission from  
The South Carolina Budget and Control Board, Audit & Certification Division

## EMERGENCY PROCUREMENT

An emergency procurement simply defined as...

- Can not be met through normal procurement procedures
- Emergency limited to immediate need
- As much competition as is practicable shall be obtained

Printed w/Permission from  
The South Carolina Budget and Control Board, Audit & Certification Division

**ANY QUESTIONS???**



**VALUES AND GUIDING  
PRINCIPLES OF PUBLIC  
PROCUREMENT**

## ACCOUNTABILITY

In [ethics](#) and [governance](#), accountability is answerability, [blameworthiness](#), [liability](#), and the expectation of account-giving.<sup>[1]</sup> As an aspect of [governance](#), it has been central to discussions related to problems in the [public sector](#), [nonprofit](#) and private ([corporate](#)) and individual contexts. In leadership roles,<sup>[2]</sup> accountability is the acknowledgment and assumption of responsibility for actions, [products](#), decisions, and policies including the [administration](#), governance, and implementation within the scope of the role or employment position and encompassing the obligation to report, explain and be answerable for resulting consequences.

In governance, accountability has expanded beyond the basic definition of "being called to account for one's actions".<sup>[3][4]</sup> It is frequently described as an account-giving relationship between individuals, e.g. "A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct".<sup>[5]</sup> Accountability cannot exist without proper accounting practices; in other words, an absence of accounting means an absence of accountability.

Accountability is an element of a [RACI](#) to indicate who is ultimately answerable for the correct and thorough completion of the deliverable or task, and the one who delegates the work to those responsible.

There are various reasons (legitimate or excuses) why accountability fails.

From Wikipedia, the free encyclopedia

## GENERAL AUDIT FINDINGS

- Inadequate competition
- Reuse old quotes
- Artificially divided procurements
- Pricing obtained from catalogs
- Mandatory Pre-bids (Regulation 19-445.2042)

Printed w/Permission from  
The South Carolina Budget and Control Board, Audit & Certification Division

## PROCUREMENT DOs AND DON'Ts

- ✓Do review the rules & regulations to ensure that you are following your organizations policies
- ✓Do conduct planning meetings w/ stakeholders prior to large procurement projects (reps from finance, it, purchasing, using dept., Etc.)
- ✓Do submit your requisitions in sufficient time for processing
- ✓Do ensure that funding is in place prior to placing orders
- ✓Do check with your Purchasing Department if you have any questions regarding the procurement process

## PROCUREMENT DOs AND DON'Ts

- ✓Do review Ethics Policy
- ✓Do ensure that all internal controls are followed
- ✓Do conduct Training Sessions for Internal & External Customers
- ✓Do require Vendors to Place Purchase Order Numbers on all invoices
- ✓Do include a detailed description on all purchase orders w/ product nos.
- ✓Do ensure that the Specification are complete & easy to understand

## PROCUREMENT DOs AND DON'Ts

**Don't** split orders to avoid competition and \$ thresholds

**Don't** use public funds for personal gain

**Don't** commit your organization prior to a Purchase Order being established or appropriate authorization received

**Don't** accept gifts from vendors

## PROCUREMENT DOs AND DON'Ts

**Don't** create a purchase order after the fact

**Don't** sign contracts unless you have authorization

**Don't** use requisitions as purchase orders

**Don't** write restrictive bid specifications

**Don't** share info with select vendors & exclude others

**Don't** forget to count the total cost



## LESSONS LEARNED

- ❑ Ensure specifications are complete and accurate



## INADEQUATE SPECIFICATIONS

Where's the rest of it?



## PURCHASING CARD USAGE TIPS

- No splitting of purchases
- Personal purchases are not allowed
- Establish Each Cardholder & Purchase Limits
- Do not exceed single purchase or monthly limit
- Retain all appropriate documentation
- Reconcile statements

## **PURCHASING CARD USAGE TIPS**

- Establish a purchasing card manual
- Secure cards at all times
- Authorized users/Signature authority
- Second signatures
- Merchant Code blocks to prevent certain type of purchases
- Greater control over gift cards
- Provide training for all users and cardholders

## **STATE CONTRACTS**

<https://www.procurement.sc.gov/agency/contracts>

## **COOPERATIVE PURCHASING & INTERGOVERNMENTAL AGREEMENTS**

# ANY QUESTIONS???



"Let me explain it this way, we have five apples and IRS want six."

# FOIA

## Freedom of Information Act

<https://www.scstatehouse.gov/code/t30c004.php>

### FOIA Requests

#### Title 30 – Public Records

#### Chapter 4 - SC Code of Laws

### INQUIRIES DURING THE SOLICITATION PROCESS (SUGGESTED WORDING)

(Name the Contracting Officer)

No questions may be directed to or contacts made with the Mayor, other members of City Council, the City Manager, and other City Staff not identified in this RFQ as points of contacts during the period of time that this RFQ is made public until the final selection is made, except as otherwise provided for herein. Violation of this prohibition may disqualify the firm and/or consulting firm from further consideration.

\*\*\*Please seek procurement and/or legal advice from your own agency or Public entity.\*\*\*

## CONFLICT OF INTEREST

*“ It is recommended to avoid even the **appearance** of a Conflict of Interest at all times and especially while serving in the capacity of a public official with the responsibility for overseeing and managing public funds.”*

## REMINDER

*“Once a solicitation is released, any lobbying or marketing activities with agency officials (outside of purchasing) should cease until the final contract has been Awarded.”*

## ETHICS

Public officials are subject to the provisions of the 1991 Ethics Reform Act (8-13-100), et. seq, South Carolina Code of Laws, 1976, as amended). Under this Act, public officials are prohibited from accepting anything of value from any person. “Anything of value” includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts and interest-free loans.

## WORKPLACE ETHICS TIPS

- Ethics training for all employees
- Written procedures on gifts, free items  
gift cards, etc.
- Conflict of interest statements and policy for internal staff  
and external vendors/contractors
- Communications with suppliers

## FINAL THOUGHTS

*“Finally, understand that the responsibility to maintain an adequate level of integrity and good stewards of all public funds and always ensure that you are in fully aware of all applicable laws, rules & regulations as well as internal policies & procedures”*

—Brittany Adams, City of Forest Acres

## ANY QUESTIONS???





## QUESTIONS & CONTACT INFORMATION

City of Forest Acres  
Finance Director  
(803) 782-9475  
[badams@forestacres.net](mailto:badams@forestacres.net)

State Office:  
Procurement Services  
State Fiscal Accountability Authority (SFAA)  
(803) 737-0600

*Please remember when in  
doubt. . . .*