RESOLUTION AMENDING THE GLOUCESTER COUNTY ADMINISTRATIVE CODE BY ADDING SECTION PUR-7 TO PROVIDE FOR CERTAIN PROCEDURES FOR AWARD OF CONTRACTS

WHEREAS, the County of Gloucester conducts significant procurement of goods and services on a regular basis; and

WHEREAS, County procurement practices are governed by, among other authority, the New Jersey Local Public Contracts Law; and

WHEREAS, Gloucester County has consistently conducted its procurement pursuant to the terms and provisions of the Local Public Contracts Law; and

WHEREAS, the County's Administrative Code describes certain procedures which the County follows to implement its procurement policy, consistent with the applicable law; and

WHEREAS, recent amendments to the New Jersey Campaign Contributions and Expenditures Reporting Act, effective January 1, 2006, are also applicable to the County's conduct of procurement; and

WHEREAS, the amendments include provisions requiring certain contracts previously exempt from competitive requirements to be awarded pursuant to a "fair and open" process under certain circumstances; and

WHEREAS, it is appropriate to amend the County Administrative Code to reference and implement these additional procurement requirements.

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Gloucester that the Gloucester County Administrative Code is hereby amended by adding section PUR-7, referencing and implementing certain provisions of the recent amendments to the New Jersey Campaign Contributions and Expenditures Reporting Act.

ADOPTED at a regular meeting of the Board of Chosen Freeholders of the County of Gloucester held on November 22, 2005, at Woodbury, New Jersey.

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF GLOUCESTER

STEPHEN M. SWEENEY, DIRECTOR

ATTEST:

ROBERT N. DI LELLA, CLERK

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NINA MITCHELL WELLS
SECRETARY OF STATE

PROPOSED AMENDMENT TO GLOUCESTER COUNTY ADMINISTRATIVE CODE SECTION PUR-7 POLICIES AND PROCEDURES

1. **Award of Contracts Consistent with the Provisions of N.J.S. 19:44A-20.4**. All contracts (subject to the exception set forth below) to be awarded by the County of Gloucester which would otherwise be exempt from the public bidding laws and which have a value in excess of $17,500.00, as determined in advance and certified in writing by the County Purchasing Agent or the County Department seeking the procurement, shall only be awarded pursuant to a "fair and open" process.

2. **Fair and Open Process.**

"Fair and open" shall mean either:

A.. that the contract shall be publicly advertised on the Gloucester County internet website in sufficient time to give notice in advance of the contract solicitation; awarded pursuant to a process that provides for public solicitation of proposals or qualifications; awarded based upon criteria established in writing by the County prior to the solicitation of proposals or qualifications; that the proposals be publicly opened at the designated time and place; that evaluation of the proposals be conducted consistent with this Administrative Code provision; that the award be subsequently announced; or

B. that the contract is awarded pursuant to the competitive contracting provisions of the Local Public Contracts Law, 40A:11-4.1 et seq; or

C. that the contract is awarded pursuant to public solicitation of bids.

D. that the contract is awarded pursuant to an RFP process established by the relevant department consistent with the requirements of and to implement the purpose of a grant received from a governmental or other funding source, provided that the RFP process is generally consistent with this Administrative Code provision.

Further consistent with the provisions of N.J.S. 19:44A-20.7, the County's determination of what constitutes a "fair and open" process shall be final.

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"Fair and open" may necessarily be implemented differently for different categories of procurement depending on the subject matter of the procurement and the nature and nuances of the industry providing the services or the product, but in every instance, the principles of "fair and open" shall be maintained.

3. **Procurement Process.** Generally, the process may include the prequalification of potential proposers and shall include the solicitation of proposals on forms to be developed by the County Counsel and the Purchasing Agent, or their designees. The award of a contract shall be based on the evaluation of the proposals, based on criteria which may include, but not necessarily be limited to the following criteria: accessibility; understanding of the assignment; price; methodology/plan for accomplishing the assignment; general experience; experience specific to the assignment; sufficiency of resources to perform the task; performance of services within the United States of America.

   The proposals shall be evaluated by a committee consisting of the County Administrator or his or her designee; the Purchasing Agent or his or her designee; the Department Head to whose department the services will be provided or for whose department the product shall be procured or his or her designee; the Department's Freeholder liaison or his or her designee; and the Freeholder Director or his or her designee.

   However, when the contract is awarded pursuant to an RFP process established by a department consistent with the requirements of a grant received from a governmental or other funding source, the evaluation shall be conducted consistent with the RFP process established by the department.

   The proposals shall be publicly opened and a list created of all proposers submitting. The evaluation shall be conducted in private. As part of the evaluation, the Committee may request supplemental information and may conduct negotiations with one or more proposers.

   The award to the successful proposer shall be made by resolution adopted by the Board of Chosen Freeholders. All proposals may become public information. The County may consider requests by proposers not to disclose trade secrets and proprietary commercial or financial information identified by the proposer. Decisions on non-disclosure shall be made consistent with the applicable provisions of all relevant law, including the Open Public Records Law.

4. **Alternative to Competitive Process.** In the alternative to proceeding with the fair and open process described herein, the County may award a contract to a business entity for an amount in excess of $17,500, pursuant to procedures prescribed by the New Jersey Local Public Contracts Law and without competitive bidding or competitive proposals. However, such award may be made only if the recipient of

the contract provides a written certification that it has not made a political contribution which would bar the award of the contract to it.

A disqualifying contribution in the context of this provision shall be one that is reportable by the recipient pursuant to N.J.S. 19:44A-1 et seq, and made within the time frame provided in that statute. If so awarded, the vendor receiving the contract shall not thereafter make such a reportable contribution during the term of that contract.

If a business entity makes a contribution that would cause it to be ineligible to receive such a public contract or, in the case of a contribution made during the term of the public contract, that would constitute a violation of N.J.S. 19:44A-20.4 et seq., the business entity may request, in writing, within 60 days of the date on which the contribution was made, that the recipient of the contribution repay the contribution. If repayment is received within those 60 days, the business entity will again be eligible to receive a contract or would no longer be in violation, as the case may be.

5. **Severability and Effectiveness Clause.** If any sentence, paragraph or section of this Administrative Code provision, or the application thereof to any persons or circumstances shall be adjudged by a Court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this Administration Code provision shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this Administrative Code provision.

6. **Effective Date**. This Administrative Code provision shall become effective on January 1, 2006.

7. **Purpose and Intent; Incorporation by Reference.** The purpose of this Administrative Code provision is to comply with the provisions of N.J.S. 19:44A-20.4 et seq. The definitions set forth in that statute are referred to and incorporated into this Administrative Code section.

8. **Exemptions.** Nothing contained in this Administrative Code Provision shall prohibit the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of emergency services, or in such other circumstances as are legally exempt from the provisions of N.J.S. 19:44A-20.4 et seq., provided that the contract is awarded consistent with the applicable law.