

SECTION 22

PURCHASING ORDINANCE

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**SECTION 22.01 - TITLE.**

This chapter shall be referred to as the “Procurement Code for the Town of Sullivan’s Island, South Carolina.”

**SECTION 22.02 - AUTHORITY.**

- (A) This chapter is adopted pursuant to and in compliance with South Carolina law and with the authority of the Town Council of Sullivan’s Island. Town Council shall develop the policies dictating the procurement of goods and services. Town Council has the right to assume full and final authority in any procurement matter.
- (B) As used in this chapter, **PROCUREMENT** is defined as the process and procedure for obtaining goods and services, including all activities from the planning steps including the preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment.
- (C) The Council of the Town delegates to the Town Administrator, or designee, the duties and responsibilities for administering the procurement of all supplies, services, and construction, as well as the management and disposal of surplus supplies and equipment in accordance with this chapter.
- (D) The Town Comptroller or authorized designee, shall provide for implementation and compliance with all requirements of this chapter in order to maximize the purchasing value of public funds, providing safeguards for maintaining quality and integrity within

the procurement system, yet providing for the fair and equitable treatment of all involved in public procurement. The Town Comptroller shall organize and execute all procurement activities for the Town as set forth in this chapter.

**SECTION 22.03 - COMPLIANCE WITH OTHER LAWS AND REGULATIONS.**

- (A) Nothing in this chapter shall prevent any municipal department from complying with the terms and conditions of state or federal laws and/or regulations which may be applicable.
- (B) Procurement which involves the expenditure of Federal assistance, contract funds, any grants, gifts, or bequest shall also comply with such Federal and State laws and authorized regulations as are mandatorily applicable regardless of whether they are presently reflected in this chapter. Notwithstanding where requirements within this chapter are more restrictive, Federal or State requirements shall be followed.
- (C) The Town Administrator and Comptroller have created a set of regulations which are hereby adopted and are incorporated into this ordinance, a copy of which is attached and marked as Exhibit A.

**SECTION 22.04 - ETHICAL PROCUREMENTS.**

- (A) In all actions involving the procurement of supplies, services, or construction for the Town, the provisions of S.C. Code, Title 8, Chapter 13 (State Ethics Act), 1976, as amended, shall be complied with and observed. Every contract or duty imposes an obligation of good faith in the negotiation, performance, or enforcement by Town staff. **GOOD FAITH** means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing. All procurement activities shall be performed in an ethical manner. No member of Town Council or any officer or employee of the Town, shall have a financial interest in any contract or in the sale to the Town or to a contractor supplying the Town of any land or rights or interest in any land, material supplies or services; except when a majority of the Town Council determines such exception is in the best interest of the Town, provided, that no Councilperson whose interest is involved shall vote on the question. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee of the Town found guilty thereof shall thereby forfeit his or her office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with the Town shall render the contract voidable by the Town Administrator or the Town Council.
- (B) The following actions are prohibited and shall be avoided by all those involved in the procurement activities of the Town:
  - (1) Not obligate the Town financially or otherwise by any means, including but not limited to purchase orders and contracts, when the employee or Councilmember has a personal, financial, or other interest in the obligation;
  - (2) Prohibited from directly or indirectly soliciting or accepting any rebate, kickback, gift, gratuity, or favor for personal gain from any individual, corporation, organization, or group. Doing so may lead to disciplinary action.
  - (3) Prohibited from accepting any form of gratuities, with the exception of non-consumable marketing or promotional mementos valued at \$25 or less which may be accepted but shared with all Town employees (i.e., pens, paper clips, pencils, cups, etc.). Accepting any other such form of gratuities, may lead to disciplinary action.

## **SECTION 22.05 - PROCUREMENT LIMITATIONS AND AUTHORIZATION.**

- (A) It is the Town's policy to develop competition to ensure maximum purchasing value for all procurements and to make awards based on the lowest, responsive, responsible bid/offer received. Nothing in this section shall prohibit a higher level, more stringent procurement method being used if it is determined that the Town's best interest would be better served. No contract or purchase shall be subdivided to avoid the requirements of this section.
- (B) Upon verification of adequate monies, procurement of goods and/or services shall be executed as follows:
- (1) *\$1 to \$5,000 - Administrative Process "Delegated Authority."* Competitive bidding is not required. The department initiating the purchase should exercise good judgement in accordance with this chapter.
  - (2) *\$5,001 to 10,000 – Verbal Quotations.*
    - (a) Competitive pricing is required. The departments will request verbal quotations from vendors in order to obtain competitive pricing. At minimum, three verbal quotes shall be solicited.
    - (b) The Town Administrator or the Town Comptroller, or designees, must approve before the purchase is made.
  - (3) *\$10,001 to \$25,000 – Written Quotations.*
    - (a) Competitive pricing is required. The departments will request written quotations from vendors in order to obtain competitive pricing. At minimum, three written quotes shall be solicited.
    - (b) The Town Administrator and the Town Comptroller, or designees, must approve before the purchase is made.
    - (c) Purchases inclusive of grants and those with Federal funds shall be referred to the Town Comptroller for processing.
  - (4) *\$25,001 to \$49,999 – Informal Solicitations for Bids or Proposals.*
    - (a) Competitive bidding is required. The Town Council will issue a written Invitation for Bids (IFB), Request for Proposals (RFP), or Request for Qualifications (RFQ) depending on the type of procurement. At minimum, three written bids or responses should be solicited.
    - (b) The Town Administrator and the Town Comptroller, or designees, must approve before the purchase.
    - (c) Purchases inclusive of grants and those with Federal funds shall be referred to the Town Comptroller for processing.
  - (5) *Purchases \$50,000 and over – Formal Solicitations for Bids or Proposals.*
    - (a) Competitive, sealed bidding is required; however, approval by Council is required before the purchase is made.
    - (b) Procurements involving construction may use a construction contracting administration method which is most advantageous to the Town and will result in the most timely, acceptable quality, economical, and successful completion of the construction project. The Town Administrator or designees, shall make a

determination regarding the appropriate method of construction contracting administration for a particular construction project.

- (c) When it is determined that competitive, sealed bidding is either not practical, appropriate, or advantageous, competitive, formal sealed proposals shall be used. Approval by the Council is required before the purchase is made.
- (C) Exceptions to bidding include the sole source, professional services, emergency procurements, purchasing cooperatives, multiterm contracts, and critical procurements as defined below.
- (1) **SOLE SOURCE.**
    - (a) Sole source procurement is acceptable when, after a good faith review of all possible sources, it is determined there is only one viable source for material, supply, or service.
    - (b) Sole source requests should not be made unless Town staff is confident the request is reasonable and appropriately justified.
    - (c) For sole source procurements between \$5,001 and \$25,000, at the request of the department manager, the Town Administrator, the Comptroller, or their designees, must approve the written sole source justification prior to the purchase being made. Approval by the Town Administrator, or designee is required for procurements between \$25,001 to \$50,000.
  - (2) **PROFESSIONAL SERVICES.** Professional services shall be advertised formally when services are expected to be \$50,000 or greater.
  - (3) **EMERGENCY PROCUREMENTS.** The Town Administrator, or designee, may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions or where normal daily operations are affected or in jeopardy.
  - (4) **PURCHASING COOPERATIVES.** The State of South Carolina and its agencies, Charleston County and other South Carolina counties, South Carolina municipalities or purchasing cooperatives write numerous indefinite-delivery-type contracts yearly with manufacturers, service providers and contractors for regional and/or nationwide items or services. In all cases, Town procurement of equipment, goods or services may be made from suppliers which have contracts in place through the State of South Carolina or one of its agencies, or Charleston County or other South Carolina county, or South Carolina municipality, or the U.S. General Services Administration, or purchasing cooperative, without seeking competitive bids or proposals
  - (5) **MULTITERM CONTRACTS.** Multiterm contracts, also known as indefinite delivery or indefinite quantity contracts, may be used for products, goods, and/or services of such nature that an ongoing annual requirement exists. Where and when such conditions exist, multiterm contracts should be used as much as possible to be in the best interests of the Town. Multiterm contracts for supplies and services may be entered into for specified periods of time, not to exceed five years.
    - (a) Subject to the limitations of this chapter, any type of contract which promotes the best interests of the Town may be used, with the exception of cost-plus-a-percentage-of-cost contract which is prohibited. A cost reimbursement, or a cost reimbursement-plus-a-fixed-fee, may be used when it is determined that such a contract would be less costly to the Town than any other type, or that it

is impracticable to obtain the supplies, services, or construction required except under such a contract.

- (b) The Town's best interest shall be served by contracts originated by using competitive prices obtained by: itemized unit measurement with cost, itemized project description breakdown with costs itemized, and lump sum project cost.

- (6) **CRITICAL PROCUREMENT.** The Town Administrator, or designee, may make or authorize procurements that in nature are critical to the Town, and time does not permit for solicitation or re- solicitation, and that the procurement may be accomplished in such a method that provides the Town's best interest be served.

**SECTION 22.06 - RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS.**

- (A) *Right to protest.* Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest in writing by hand-delivered or certified mail, return receipt requested to the Town Administrator. The protest, setting forth, in detail, the grievance shall be submitted in writing, and received within five calendar days from the time of award of the goods or services being grieved.

- (B) *Authority to resolve protests.*

- (1) *Informal solicitation of purchases less than \$50,000, and its award.*

- (c) The Town Administrator, or designee, shall have the authority to settle and resolve a protest of the aggrieved concerning the solicitation or award of an informal contract, of which the value of the solicitation or award was not expected to exceed an amount of \$50,000.
- (d) The Town Administrator, or designee, shall meet with the aggrieved, within five business days to review and receive comments and facts giving rise thereto.

- (2) *Formal solicitation and its award.*

- (a) The Town Administrator, or designee, shall deliver to the Mayor to settle and resolve a protest of the aggrieved concerning the solicitation or award if it would have or was expected to exceed \$50,000.
- (b) The Mayor, having received a protest of the aggrieved shall:
  - 1. Schedule and convene, within ten business days, a special Meeting of Council; or
  - 2. Put on the agenda for the next scheduled meeting, whichever is quicker.
- (c) The Council shall review and offer to hear comments from the aggrieved setting forth their grievance and the facts giving rise thereto.
- (d) The Council's authority shall be utilized in a manner consistent with this chapter and regulations governing the procurement of supplies, services, and construction for the Town.

- (C) *Decision.*

- (1) *Informal solicitation of purchases less than \$50,000 and its award.* The Town Administrator, or designee, shall promptly issue a decision in writing to the protestor. The Town Administrator's response shall be issued within ten business days from the date of meeting with the protestant.
- (2) *Formal solicitation of purchases of \$50,000 and greater and its award.* The Council shall promptly issue a decision in writing to the protestor. The Council's response shall

be issued within ten business days from the date of having convened the Council and received or heard comments from the protestant.

- (E) *Notice of decision.* A copy of the notice of the decision under division (C) of this section shall be delivered by certified mail, return receipt requested immediately upon issuance to the protestor and any other party intervening.
- (F) *Finality of decision.* A decision under division (C) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a final appeal in writing, setting forth the grievance, within five business days of receipt of notice of the decision.
  - (1) *Appeal.* Any actual or prospective bidder, offeror, contractor, or subcontractor, having received the notice of decision, may file a final appeal.
  - (2) *Appeal of Town Administrator's decision (informal solicitations).* The final appeal, setting forth the specific reasons and basis for the appeal of the Town Administrator's decision, shall be received in writing, by hand-delivery or by certified mail, return receipt requested, within five business days of receipt of notice of the Administrator's decision, to the Mayor.
- (G) *Authority to resolve appeals.*
  - (1) *Final appeal of Administrator's decision.* The Mayor, having received a request for appeal of a decision rendered by the Administrator shall bring before full Council and resolve in like manner as protests under division (B)(2) of this section.
- (H) *Decision of appeal.*
  - (1) The Mayor shall promptly issue the decision of the Council, in writing to the appellant within ten business days of having heard and reviewed the appeal. The decision shall state the reasons for the actions taken.
- (I) *Finality of decision.* A decision rendered under division (H) of this section is considered final and conclusive, unless fraudulent. Such a decision is the final administrative review and the decision of the Town which can be appealed to the Circuit Courts of the state.

#### **SECTION - 22.07 - OPEN RECORDS.**

The Procurement Division shall keep a record of all open solicitations and bids submitted in competition thereon, and such records shall be open to public inspection in accordance with the Town policies on the Freedom of Information Act.

#### **SECTION - 22.08 DISPOSAL OF TOWN PROPERTY OTHER THAN REAL PROPERTY.**

The sale, lease, or disposal of surplus supplies, inventories, and other Town properties, other than real properties, shall be by in-house auction, outside auction, formal or informal bidding process, online auction services, broker services, or other appropriate competitive methods designated herein or otherwise as authorized by the Town Administrator, or authorized designee. The sale, lease, or disposition of real properties rests within the authority of full Council.

SECTION 22.09 – DATE OF ENFORCEMENT

This Ordinance takes effect and is in full force immediately.

Motion was made by Mayor Pro-Tem Clark, seconded by Councilmember Bachman Smith, IV,

And approved by a vote of 7-0. Passed and approved by the Town Council for the

Town of Sullivan's Island South Carolina on the 19<sup>th</sup> day of January, 2021.

# EXHIBIT A – Chapter 22

## TOWN OF SULLIVAN'S ISLAND PROCUREMENT REGULATIONS GUIDE

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## Section 1: What is Procurement

Procurement is the process through which requisitions are received, solicitations issued, vendors selected, contracts awarded, purchase orders issued, goods or services are received, and payment is made.

One of Procurement's main roles is ensuring goods and services are of high quality, available when needed and not overpriced. Additionally, taxpayers must know that public funds are spent wisely on its behalf and not for the personal benefit of government employees, officials, or their friends.

The Procurement Agents, consisting of the Town Administrator and the Comptroller, procure goods and services for the Town of Sullivan's Island (Town) by performing the following tasks:

- Process and approve certain purchase requisitions
- Issue purchase orders and change orders
- Review specifications
- Advertise and issue solicitations
- Evaluate bids, proposals, and quotations
- Negotiate and draft contracts
- Maintain vendor contact lists
- Administer and closeout contracts
- Resolve vendor/contractor performance complaints and contract compliance issues
- Verify licenses and insurance coverage for contractors (as needed)
- Provide procurement training
- Ensure compliance with the Procurement Code (Chapter 22 of Town Ordinances) and audit procurement files
- Manage surplus and seized property and disposition
- Review and Update the Town's Procurement Regulations Guide on an annual basis.

### 1.1: Procurement Authority

The Procurement Agents derive their authority from Town Ordinance Chapter 22. Town Council passed and adopted Ordinance Chapter 22, to govern the procurement activities of the Town, under the direction of the Town Administrator and the Comptroller. In general, the Ordinance established that the Procurement Agents' duties have been prescribed by the laws of the State of South Carolina and Town Council. Federal law is applicable to Town procurement activities anytime Federal funds are used for certain procurements.

### 1.2: Procurement Mission Statement

To effectively manage the costs of goods and services to best meet the needs of Town departments and to deliver superior performance in a manner that is distinctive and impactful to each person served and establishes a standard for quality that endures for generations.

### 1.3: Procurement Objectives and Standards

All procurements will be conducted with the following values:

- Avoid unfair practices and give all qualified vendors an equal opportunity to do businesses with the Town.
- Refuse to accept any form of bribery and prevent any appearance of doing so.
- Receive counsel from colleagues and cooperate with them to promote a spirit of teamwork and

unity.

- Behave with fairness and dignity, and demand honesty and truth throughout the procurement process.
- Strive for greater knowledge of procurement methods and the materials and services purchased.
- Purchase without prejudice, stimulate competition on all procurements, and seek to obtain the maximum value for each dollar spent of taxpayer monies.
- Maintain competitive bidding procedures as the primary, preferred, method of procurement.
- Develop material standards that afford a wide area of competitive bidding consistent with the required levels of quality.
- Maintain open, public records of firms solicited, and all prices quoted and paid for items obtained for Town use.
- Furnish clear indications of quality and service required in all bid solicitations.

#### 1.4: Procurement Ethics

The following ethic statements are applicable to all Town employees who participate in the procurement process:

- Town employees shall not obligate the Town financially or otherwise by any means, including but not limited to purchase orders and contracts, when the employee has a personal, material, financial or other interest in the obligation.
- Employees are prohibited from directly or indirectly soliciting or accepting any rebate, kickback, gift, gratuity, or favor for personal gain from any individual, corporation, organization, or group. Doing so may lead to disciplinary action.
- Town employees shall not accept any form of gratuities, with the exception of non-consumable marketing or promotional mementos valued at \$25 or less which may be accepted but shared with all Town employees (i.e., pens, paper clip holders, pencils, cups, etc.). Accepting any other such form of gratuities, may lead to disciplinary action.

Every contract or duty imposes an obligation of good faith in the negotiation, performance or enforcement by Town staff. Good faith means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

In all actions involving the procurement of Town items, the provisions of South Carolina State Ethics Act shall be complied and observed.

#### 1.5: Procurement Organization Structure

The Town Administrator, or designee, shall be responsible for administering the Procurement Code.

The Comptroller, or designee, shall provide for implementation and compliance with all the requirements of this policy to meet the objectives and standard set forth. The Town Administrator and Comptroller shall coordinate with the Department Heads in establishing specifications for use in the procurement of all materials, supplies, equipment, construction, or services, including directing the bidding process of appropriate purchases, supervising the evaluation of bids, and participating in contract negotiations. They shall coordinate the awarding and executing of contracts and purchases within the confines of the procurement ordinance and ensure compliance with local, State, and Federal guidelines. The Comptroller shall be responsible for training staff in the procurement policies and establishing and maintaining an

effective professional working relationship between all personnel and suppliers, department heads, contracts, and other governmental units and the public.

Department heads and/or any Town agent shall provide for implementation and compliance with all the requirements of this policy and as applicable to small purchases, departmental procurement inclusive of internal departmental processes and procedures or the expenditure of public monies.

The Administrative Department is located at the Town hall at 2056 Middle Street. Office hours are Monday through Friday, 8 a.m. to 5:00 p.m.

## Section 2: Town Policies Affecting Procurement

### 2.1: Solicitation Policies

It is the Town's policy to develop competition to ensure maximum purchasing value for all procurements and to make awards based on the lowest, responsive, responsible Bid/Offer received.

Nothing in this section shall prohibit a higher level, more stringent procurement method being used if it is determined that the Town's best interest would be better served.

Purchase orders will be issued, using the Town's financial software, to the recommended vendor. Purchase requisitions entered into the financial software must be approved based upon the correct level of authorization which corresponds to the purchase price.

### 2.2: Procurement Levels

#### **\$1 to \$5,000 – Administrative Process “Delegated Authority”**

Competitive bidding is not required. At the Buyer's discretion, a purchase order will be issued to the vendor recommended by the requesting department. The department head, or designee, must approve the purchase requisition in the financial software which authorizes the purchase. The department should exercise good judgement in accordance with this Guide. The department head, or designee, shall ensure funds are budgeted sufficient for the purchase.

#### **\$5,001 to \$10,000 – Verbal Quotations**

Competitive pricing is required. Departments shall request verbal quotations from vendors in order to obtain competitive pricing. At minimum, three quotes shall be solicited.

#### **\$10,001 to \$25,000 – Written Quotations**

Competitive pricing is required. Departments shall request written quotations from vendors in order to obtain competitive pricing. At minimum, three written quotes shall be solicited.

If three quotes cannot be solicited, please see section on [Sole Source](#). Award is made to the lowest quote.

The Town Administrator and the Comptroller, or designees, must approve before the purchase is made if between \$10,001 to \$25,000.

Purchases inclusive of grants, those with Federal funds, or those requiring contracts shall be referred to the Town Administrator for processing.

## **\$25,001 to \$49,999 – Informal Solicitations for Bids or Proposals**

Procurement will issue a written Invitation for Bids (IFB), a Request for Proposal (RFP), or a Request for Qualifications (RFQ), depending on the type of procurement. Typically, commodity items are procured using a bid process where an award is made to the lowest responsive and responsible bidder. However, in some instances an RFP may be used.

At minimum, three written bids should be solicited in the case of an IFB. If three bids cannot be solicited, please see section on [Sole Source](#). Award is made to the lowest responsive and responsible bidder. In the case of RFP/RFQ, award is made in accordance with the evaluation criteria, terms and conditions stated therein.

Purchases inclusive of grants, those with Federal funds, or those requiring contracts shall be referred to the Town Administrator for processing.

For normal competitive purchases, the department manager, the Town Administrator, and the Comptroller, or designees shall approve before the purchase is made.

## **Purchases over \$49,999 – Formal Bids or RFQ/RFPs**

Competitive, sealed bidding is required; however, approval by the Town Council for purchases over \$49,999 is required before the purchase is made.

Procurements involving construction may use a construction contracting administration method which is most advantageous to the Town and will result in the most timely, acceptable quality, economical, and successful completion of the construction project. The Town Administrator or designee, shall make a determination regarding the appropriate method of construction contracting administration for a particular construction project.

When it is determined that competitive, sealed bidding is either not practical, appropriate or advantageous, competitive, formal sealed proposals shall be used. Approval by the Council is required before the purchase is made.

### **2.3: Exceptions to Bidding**

#### **2.3A: Sole Source**

Sole Source procurement is acceptable when, after a good faith review of all possible sources, it is determined there is only one viable source for material, supply, or service. To be a sole source:

- a vendor shall have the ability to deliver a unique material or service,
- have technical expertise or qualifications,
- have software license,
- the ability to deliver at a particular time, or
- have the ability to fulfill the needs for a special purpose or situation from a qualified provider.

Sole source requests should not be made unless the department is confident the request is reasonable, appropriately justified to meet the Town's requirements, and can withstand a possible audit. Sole source minimizes or eliminates competition and should be prudently used.

The department manager, or designee, may use “delegated authority” practices for purchases \$5,000 and under. From \$5,000 to \$25,000 the department manager, the Town Administrator, or the Comptroller, or designees, must approve the written sole source justification before the purchase may be made. For purchases between \$25,001 to \$49,999, the department must coordinate with the Comptroller, or designees, before obtaining approval by the Town Administrator, or designee.

### 2.3B: Emergency Procurement

The Town Administrator, or designee, may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions or where normal daily operations are affected or in jeopardy.

Technically, an emergency need is one that could not have been foreseen. Failure to submit a requisition on time does not constitute a valid emergency.

### 2.3C: Purchasing Cooperatives

The State of South Carolina and its agencies, Charleston County and other South Carolina counties, South Carolina municipalities or purchasing cooperatives write numerous indefinite-delivery-type contracts yearly with manufacturers, service providers and contractors for regional and/or nationwide items or services. In all cases, town procurement of equipment, goods or services may be made from suppliers which have contracts in place through the State of South Carolina or one of its agencies, or Charleston County or other South Carolina county, or South Carolina municipality, or the U.S. General Services Administration, or purchasing cooperative, without seeking competitive bids or proposals.

For purchases over \$10,000, departments must coordinate with the Comptroller, or designee, to ensure proper procurement.

The Town may sell to, under the guidance of the Town Administrator, may acquire from, or use any supplies belonging to another public procurement unit as agreed upon between the parties. The Town, under the guidance of the Town Administrator, may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

### 2.3D: Critical Procurement

The Town Administrator, or designee, may make or authorize procurements that in nature are critical to the Town, and time does not permit for solicitation or re-solicitation, and that the procurement may be accomplished in such a method that provides the Town’s best interest be served.

The Town Administrator, or designee, may make or authorize others to make, critical procurements when in nature, it is critical to the Town and time does not permit for solicitation or re-solicitation and that the method provides that the Town’s best interest is served. In such cases, the department head must coordinate with the Comptroller, or designee, before seeking written approval by the Town Administrator, or designee.

## 2.4: Invalid purchases

The Town may consider as void, any purchase or contract made on behalf of the Town which is contrary to the provisions of Town Ordinance Chapter 22 or this policy. The employee making such purchase



transactions will be considered for disciplinary action by their department manager or the Town Administrator as appropriate.

### 2.5: Insurance

The Town requires that contractors have, and maintain, certain types of insurance coverage when they repair, install, construct, or otherwise perform services. Insurance requirements vary depending on the type/scope of services provided. In certain cases, the contractor will need to provide insurance coverage. Insurance coverage may include commercial general liability, automobile liability, worker's compensation insurance, and/or professional liability insurance. The departments are required to follow up with the contractor to ensure insurance records are kept and maintained up-to-date. If the contractor fails to provide insurance coverage requirements, or documentation is not provided to the Town; the Town reserves the right to terminate the contract with the contractor for cause.

### 2.6: Training

The Town will provide, at least annually, a training session for all Town departments to familiarize themselves with the Town's policies, procedures and guidelines for the procurement process.

### 2.7: Retention and Disposition

The Public Records Act (Code of Laws of South Carolina 1976, as amended, Sections 30-1-10 through 30-1-170) sets forth requirements for the retention and disposition of Procurement Files. Departments should coordinate records retention and disposition with the Town Clerk.

## Section 3: Methods of Procurement

### 3.1: Appropriated Monies

Except for emergencies or other authorized exceptions, no procurement or commitment of monies shall be made by any department, or employee of the Town unless monies have been appropriated and are available in the appropriate account. Monies can be transferred from other line items within a department with the approval of the Town Administrator, Comptroller, or designee.

### 3.2: Contracts or Agreements

A contract, or an agreement, is a legally binding document that is used for most purchases over \$50,000. It authorizes the contractor to design, build, provide services or deliver materials or supplies in accordance with the terms and conditions specified thereon (or incorporated from a bid or other document by reference). It also acknowledges the obligation of the Town to pay for goods or services ordered, upon the receipt and proper invoice. The Town Council and/or the Town Administrator, or authorized designee, may legally bind the Town in procurement documents. All negotiations, contracts and the like are not finalized until written signature of the Town Administrator or authorized designee.

### 3.3: Purchase Orders

A purchase order (PO) authorizes the vendor to deliver materials or supplies in accordance with the terms and conditions specified thereon (or incorporated from a bid or other document by reference). It also acknowledges the obligation of the Town to pay for goods or services ordered, upon the receipt and

proper invoice. Unless a separate contract document is executed, the purchase order establishes the contractual relationship between the Town and the vendor.

A PO is a legally binding contract. The PO is the Town's commitment for the value of the material or service ordered.

One-time purchase orders are generally issued for a finite quantity of products, construction, or services. Once a PO has been issued, the accounting system will automatically encumber, or set aside, the monies from the department's budget. This allows the department to more closely monitor their budget. Once the goods or service has been received, and the invoice has been received and approved; payment may be applied.

A blanket purchase order may be used for purchases that are made on an "as-needed" basis. Only items, or services, that are described on the blanket purchase order may be purchased. Control of the use of the blanket purchase order is the responsibility of the Comptroller, or designee. Blanket PO's allow departments to order as-needed items throughout the fiscal year without having to request a new PO for each purchase as well as the ability to qualify for lower, consolidated pricing. Any authorized Town employee may issue a release for specific goods described by the blanket PO pursuant to its terms and conditions.

In certain instances, for example, purchases from utilities, PO's may not be required. It is the responsibility of the Comptroller to make the determination as to the necessity of a PO for such purchases.

### 3.4: Change Orders

Because the contract or purchase order (PO) is a legal document that represents, or forms the basis of, the contractual relationship between the Town and a vendor, any changes to that contract must be in writing. When change orders are needed, they must be approved in the same sequence as the initial contract or PO, up to and including approvals by the Comptroller, Town Administrator, or designees. Any payments to the vendor will be delayed while proper documentation is completed. Furthermore, the contractual rights of the Town and the vendor are jeopardized by such unauthorized changes.

## Section 4: Town Procedures for Solicitations

### 4.1: Notice/Advertisement of Solicitations

Offers shall be requested and obtained from at least three sources whenever possible. When the procurement of goods or services is anticipated to be greater than \$25,000, the solicitation must be accomplished in writing. Solicitations shall be issued in an efficient and economical manner to at least attempt to secure, if available, three qualified sources.

All suppliers solicited shall be afforded complete, unbiased information as to the description or requirements of the goods and services, including any special conditions of the expected procurement.

Solicitations shall include specifications, a clearly defined scope of goods or services, and all contractual terms and conditions applicable to the procurement.

Adequate notice for the formal solicitations shall be given, no less than ten calendar days prior to the date set forth therein for the opening of the bids. Such notice shall include publication in a newspaper of

general circulation within the appropriate classified section, or publication on the Town's website, or publication on the South Carolina Business Opportunities (SCBO) website.

Written responses will be acceptable as disclosed in the solicitation.

#### 4.2: Specifications

Specifications are defined in this context as, any technical or purchase description or other description of the physical quality or functional characteristics, or of the nature of a supply, service, or construction item. It may also include a description of any requirement for inspecting, testing or preparing a supply, service, or construction item for delivery. It is the primary responsibility of the requesting department head to furnish adequate specifications to the Town Administrator. The Town reserves the right to specify brand names based on its experience, current inventory and other qualifications specified by the requesting department. However, on occasion brand names may be noted as descriptive, not restrictive information, and in such cases, are used to indicate the quality and characteristics of products that will be satisfactory. In these instances, the Town in its solicitation will note that it will consider Bids offering "equal" products other than the one described by brand name if such products are clearly identified in the Bid response to the Town.

Specifications should be adequately detailed, precise, clear but simply worded, not unduly restrictive to permit competitive bidding, and to encourage cost effective procurement.

No changes in specifications shall be made to an invitation or any solicitation, unless all prospective offerors shall be notified of any changes. In the case of formal invitations, this shall be accomplished by written addenda and delivered to all offerors known to have received an invitation. In the case of informal solicitations, this may be accomplished by telephone, verbally, email, through the Town's Procurement Portal, by fax transmission or in writing, depending on the complexity of the change. The changes must be clear, precise, assuring no misunderstanding by an offeror, no matter how the change is communicated. The changes shall be made available to all prospective offerors.

Should it be determined, after all bids of \$50,000 or more have been received and reviewed, that a product or service with an alternate specification would prove to better serve the Town's needs and best interest; all such bids may be rejected at the discretion of the Council.

It is desirable that the Town stay abreast and current with rapid changes in methods and state-of-the-art products, goods, and services. Alternate specifications may be requested and considered when it is determined by the Town that such proposals would be in the Town's best interest and clearly indicated within the invitation.

Specifications as written and solicited are generally the minimal requirements which will be acceptable for the needs of the Town. Superior or "better than" offers may be considered and accepted by the Town if the following conditions are met:

- Superior products, goods, or services do not exceed the cost of the lowest or next lowest responsive offer or under budget;
- the overall integrity is not jeopardized as far as the form, fit, and function is maintained; and
- it is in the best interests of the Town.

### 4.3: Receipt, Safeguarding and Opening of Solicitations

All bids received prior to the advertised opening shall be kept secure and unopened. Formal, sealed bids and proposals that are hand delivered will be initialed, indicating the date and time received into the Administrative Department.

Sealed bids shall be opened in the presence of one or more witnesses at the time and place designated in the solicitation. The name of each bidder, the amount of each bid, and other relevant information as specified in the solicitation, will be tabulated. The bid tabulation shall be open to public inspection at that time.

Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the solicitation. However, only the names of the offerors will be read aloud, recorded, and open for public inspection. Contents of the successful offeror's proposal, upon written request, shall be made available for inspection. Information considered confidential shall not be disclosed.

The Town Administrator may authorize use of electronic submission of bids/proposals. If electronic submission is authorized, the solicitation shall specify the acceptable method that offerors may use.

### 4.4: Corrections or Withdrawals

Corrections or withdrawals or inadvertently erroneous bids prior to bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with this Guide and the solicitation.

Any offeror may, by requesting in writing, withdraw the bid or proposal for any reason prior to the scheduled opening.

Properly worded and directed changes or corrections, which do not disclose the total bid amount, may be made by any bidder if submitted to the Town in writing prior to the bid opening. Changes that indicate or openly divulge the total amount of the bid shall not be accepted. These changes or corrections may be delivered as disclosed in the solicitation.

- To increase or decrease a previously submitted lump sum bid amount, the bidder shall instruct the Town the amount that the bid is to be increased or decreased by.
- In a case of a bid which contains multi-items, the bidder shall instruct the Town the item and the amount that is desired to be increased or decreased.

After the opening, no changes in offeror prices or other provisions of the bid/proposal prejudicial to the interest of the Town or fair competition shall be permitted.

### 4.5: Late Bids/Proposals

It shall be the responsibility of all offerors to provide adequate means whereby their proposal or bid, whether electronically submitted, mailed or hand-delivered be received by the Town no later than the date and time as stated in the solicitation. Any proposal, modification, or withdrawal received at the Town's designated office in the solicitation after the exact time specified for receipt of solicitation is "late" and will not be considered.

### 4.6: Acceptance and Evaluation

All responses received shall be evaluated for price, quality, acceptability, as specified, availability of goods or services, past performance, transportation or any other special cost or factors which may apply, including any special conditions or exceptions which the offeror may have stipulated.

Bids and proposals shall be accepted unconditionally without alteration or correction, except as may be otherwise authorized in this Guide. The solicitation, whether sealed bids or proposals, shall state the evaluation criteria. No criteria may be used in the bid evaluation that is not set forth in the invitation for bids. The request for proposals shall state the relative importance of price and of each evaluation factor. The Town may, prior to the evaluation of any offer received, establish numerical weightings for each factor. Additionally, the Town may determine that the use of competitive sealed bidding is either not practicable or advantageous, and as such may use competitive 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 Town in the solicitation. With best-value bid, the award shall be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the Town; taking into consideration all evaluation factors set forth in the best-value bid.

The Town should be able to evaluate bids solely using the information as supplied by the offeror's bid. However, it is sometimes determined that, for clarification and more professional evaluation, additional information is desirable and often necessary. Therefore, as provided in the IFB, the Town reserves the right to hold discussions, review the specifications as believed offered, and request clarification or any additional technical information which may provide a fair and impartial evaluation by the Town. All discussion shall be limited to the offeror's products, goods or services, and no discussion shall be permitted regarding offers by others.

As provided in the request for proposals, prior to any negotiations, discussion may be conducted with any offerors submitting a proposal, which appears to be eligible for contract award pursuant to the selection criteria as set forth in the invitation for proposals. All such discussions shall be of the nature of clarification of offeror's understanding of specifications, scope of work, goods or services, offeror's qualifications, availability of qualified personnel, proven experience, including referenced clients and the financial stability and responsibility of the offeror. In conducting any such discussions, there must be no disclosure of any information derived from proposals submitted by other competing offerors.

## 4.7: Negotiations

### 4.7A: Informal Bids

Negotiation is generally not applicable to informal bids. However, negotiations may be conducted and in the event that negotiations are unsuccessful in reaching a price or scope of work or services which would be agreeable, the Town, at its discretion, may terminate all negotiations with the lowest offeror, and enter new negotiations with the next lowest offeror; and likewise, the third and sequential offerors should negotiations not be productive with the second lowest offeror.

### 4.7B: Sealed Bids

Generally, sealed bids are not negotiated; but in the event all bids exceed available funds as certified by the Town's Comptroller or considered unreasonable; the Town shall be authorized, in situations where the Town's best interest precludes re-solicitation of work, goods, or services of a reduced scope; to negotiate

an adjustment in the bid price, including change in the requirements, with the low, responsive and responsible bidder, in order to bring the bid within the amount of available funds.

In the event that negotiations are unsuccessful in reaching a price or scope of work or services which would be agreeable, the Town, at its discretion, may terminate all negotiations with the lowest offeror, and enter new negotiations with the next lowest offeror; and likewise, the third and sequential offerors should negotiations not be productive with the second lowest offeror.

Should subsequent negotiations be conducted, all negotiations shall be conducted in like manner as with the first offeror. No changes or reductions in scope of work or services shall be permitted during negotiations with sequential offers that was not permitted or offered within the negotiations with previous responsive offerors.

In conducting negotiations, there must be no disclosure of any information derived from bids submitted by competing offerors.

#### 4.7C: Sealed Proposals

After evaluation, if in the best interest of the Town, as provided in the invitation for proposals, negotiations may be conducted with any offerors submitting a proposal which has been determined by the Town Administrator to be eligible for contract award. All apparently eligible offerors must be afforded the opportunity to submit best and final proposals if negotiations with any other offeror results in material alteration or reduction in the scope of work or services to the invitation for proposals, and such alteration or reduced scope of work or services has a cost consequence that may alter the order of offerors' price quotations contained in the initial proposal. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

#### 4.7D: Multi-step Sealed Bidding/Proposals

When it is considered initially impractical by the Town Administrator to prepare a procurement description complete with specifications to support an award based on price, a solicitation may be issued requesting the submission of unpriced offers to be followed by an invitation for bids/proposals limited to those offerors whose offers have been qualified under the criteria set forth in the first solicitation.

#### 4.8: Award

Award shall be made to the most responsive, responsible offeror whose response has been evaluated and determined to meet the requirements and to be in the best interest of the Town.

Formal bids and proposals shall be awarded with reasonable promptness by written notice to the most responsive, responsible bidder whose bid meets the requirements and specifications and any other award criteria as set forth in the solicitation document, and in the best interest of the Town.

Where bids or proposals have been requested and received other than lump-sum total, the Town Council may, in the best interest of the Town, award projects or requirements to the lowest, most responsive offeror, considering the sum total for each project, goods, or services, or the combined sum total for all projects, goods, or services.

In all cases, the Town Council shall reserve the right to reject or accept any or all proposals and to waive any informalities or irregularities in the bids if it is in the best interest of the Town.

#### 4.8A: Tied Offerors

If two or more offerors are tied in price while otherwise meeting all of the required conditions, award shall be determined as follows:

1. All tied offerors shall be notified of the existing tied conditions;
2. All tied offerors shall be provided the opportunity to submit best and final offers in an effort to break the tie;
3. All tied offers shall be given sufficient time considered reasonable and shall be notified of date and time required to submit best and final offer;
4. Best and final offers will be received, opened, and recorded in like manner of the original opening;
5. Offerors failing to submit best and final offers shall be considered unresponsive;
6. Best and final offers shall only be accepted from invited tied offerors.

As the offers are in the final stage and limited to monetary cost, then no further discussions or negotiations are to be considered.

#### 4.8B: Award Delay

Should the Town have reasonable cause why a contract cannot or should not be entered into within the allocated time indicated in the solicitation, the acceptance time may be extended for all or any projects, goods, or services by mutual agreement between the Town and the successful offeror(s).

#### 4.9: Policies for Offerors

##### 4.9A: Collusion or Anticompetitive Practices

When collusion or other anticompetitive practices are suspected among other bidders or offerors, an immediate notice of the relevant facts shall be transmitted to the Comptroller, the Town Administrator, and the Town Attorney.

##### 4.9B: Responsibility of Offerors

Responsibility of the bidder or offeror shall be ascertained for each contract solicited by the Town concerning the capacity and capability to meet the terms of the contracts, and based upon past record of performance for similar contracts.

A written determination of non-responsibility of a bidder or offeror shall be made. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such offeror.

##### 4.9C: Approved Accounting Systems

The Town may require the selected offeror have:

1. An accounting system that permits timely development of all necessary cost data in the form required by the specific contract type contemplated.
2. An adequate accounting system to allocate costs in accordance with generally accepted accounting principles.
3. An accounting system that retains records which may apply to the contract, or subcontract, for a period of three years from the date of the final payment under the prime contract, unless a shorter period is otherwise authorized in writing.

#### 4.9D: Right to Audit Records

The Town and its authorized representatives shall have the right to audit, to examine, and to make copies or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the contract or agreement with the Town kept by or under the control of the contractor, its employees, agents, assignors, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; cost of pricing data, testing reports, submittal requirements; records pertaining to the performance of work; and correspondence.

The contractor shall at any time requested by the Town, whether during or after completion of the agreement, and at the contractor's own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the Town. Such records shall be made available to the Town during normal business hours at the contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Town.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Town unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the contractor to the Town, in excess of one-half one percent (0.5%) of the total contract billings, the contractor shall reimburse the Town for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Town may recoup the costs of the audit work from the contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from the presentation of the Town's findings to the contractor.

#### 4.9E: Resolution of Protested Solicitations and Awards

Any actual or prospective bidder, offerors, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest in accordance with Town Ordinance, Chapter 22.

### Section 5: Construction Contracting

The method of construction contracting administration used for a Town construction project shall be determined to be that method which is most advantageous to the Town and will result in the most timely, acceptable quality, economical, and successful completion of the construction project. All Town construction contracts valued at \$50,000 or greater shall be procured based on the following as set forth in this section.

The Town Administrator, the Comptroller, and the appropriate department head, or designees, shall make a determination regarding the appropriate method of construction administration for a particular



construction project. Methods include, but not limited to design-bid-build, design-build, or construction manager at risk.

### 5.1: Design-Bid-Build Method of Construction Contracting

Design-bid-build method is where the Town will sequentially award separate contracts, the first for the architectural and engineering services to design the project and the second for construction of the project according to the design. Both contracts are separately solicited and awarded. Architectural and engineering services are procured using the methods outlined under Professional Services.

Construction contracting under this method shall be awarded by sealed bidding pursuant to the procedures as set forth elsewhere in this chapter, with the following exceptions:

The invitation shall include, but not be limited to, all contractual terms and conditions applicable to the procurement. Bids shall be accepted unconditionally without alteration or correction, except as otherwise noted in this chapter. The invitation for bids shall set forth all requirements of the bid, including the following, as determined necessary. Where required by the invitation, all responsive bidders shall include subcontractor information as specified.

1. Any bidder, in response to an invitation for bids, shall set forth in the bid or offer, the names and the locations of the place of businesses for each subcontractor, or supplier, who will or is expected to perform work or render service to the prime contractor to or about construction, and who will specifically fabricate and install a portion of the work which is expected to exceed 3% of the prime contractor's total base bid, or any subcontractor whose construction elements are deemed vital by the Town for the project and so listed and specified by the Town within the invitation and the bidding documents.
2. Failure to list subcontractors, or suppliers, when required and specified by the invitation in accordance with this section may render the prime contractor's bid as nonconforming.
3. No prime contractor whose bid is acceptable in accordance with this section shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except with the consent of the Town, for good cause shown. The Town reserves the right to reject any and all subcontractors for justifiable cause, with a substitute to be agreed-upon by both parties.
4. The Town shall make available to all in attendance, a copy of the record of the bid tabulation at the public opening of the bids. Like information shall be provided to those not in attendance at the opening, when so requested in writing.

### 5.2: Design-Build Method of Construction

The design-build method is where the Town will enter into a single contract for design and construction of the construction project. Contracts for design-build shall be procured by competitive sealed proposals. Each Request for Proposal (RFP) for design-build shall include: evaluation factors, design specifications, and a solicitation for proposal development documents. When the Town Administrator determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement, the Town may:

1. prequalify vendors by issuing a Request for Qualifications (RFQ) in advance of the RFP, or
2. select a short list of responsible vendors prior to discussions and evaluations, provided the number of proposals will be short-listed is stated in the RFP and prompt public notice is given to

- all vendors as to which proposals have been short-listed, or
3. pay stipends to unsuccessful vendors, provided that the amount of such stipends and terms under which stipends will be paid are stated in the RFP.

Each RFP for design-build shall state the relative importance of the following evaluation factors:

- demonstrated compliance with the design requirements,
- vendor qualifications,
- financial capacity,
- project schedule,
- price,
- and other factors, if any, as disclosed in the RFP.

### 5.3: Construction Manager at Risk Method of Construction

The construction manager at risk (CMAR) method is where the Town enters into a single contract with a construction manager to deliver the construction project within a Guaranteed Maximum Price (GMP) which is based on the construction documents and specifications at the time of the GMP plus any reasonably inferred items or tasks. The CMAR provides professional services and acts as a consultant to the Town in the design development as well as the construction phases. The CMAR may provide some of the actual construction of the project depending on the availability of bidders and subcontractors. In addition to acting in the Town's best interest, the CMAR must manage and control construction costs to not exceed the GMP because contractually any costs exceeding the GMP that are not change orders are the financial liability of the CMAR.

Each RFP for CMAR shall include: evaluation factors, design specifications, and a GMP. When the Town Administrator determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement, the Town may:

1. prequalify vendors by issuing a Request for Qualifications (RFQ) in advance of the RFP, or
2. select a short list of responsible vendors prior to discussions and evaluations, provided the number of proposals will be short-listed is stated in the RFP and prompt public notice is given to all vendors as to which proposals have been short-listed, or
3. pay stipends to unsuccessful vendors, provided that the amount of such stipends and terms under which stipends will be paid are stated in the RFP.

Each RFP for CMAR shall state the relative importance of the following evaluation factors:

- demonstrated compliance with the design requirements,
- vendor qualifications,
- financial capacity,
- project schedule,
- price,
- and other factors, if any, as disclosed in the RFP.

### 5.4: Bid Security

The Town may, at its discretion, require bid security deposits as stated in the invitation for bids on any projects. Construction projects valued at \$50,000 and over will be required to hold bid securities. These

deposits may take the form of a certified check, a cashier's check or bond executed by a surety company licensed under the laws of South Carolina to execute such bonds. The bid security shall be in an amount to at least 5% of the amount of the bid. When the invitation for bids requires security, noncompliance requires that the bid be rejected. Bid deposits will be returned to the unsuccessful bidders after an award determination has been made. In the event the successful bidder shall fail to enter into a contract within the terms of the invitation after having been notified of the award, the bid security deposit shall, at the option of the Town, be forfeited to the Town and retained and deposited to the Town's account. In such an instance, the Town may renegotiate with the second lowest, responsive and responsible bidder, or resolicit new bids; whichever is determined in the best interest of the Town.

### 5.5: Performance Bonds

When construction contracts are awarded, labor, material, and performance payment bonds may be required at the option of the Town and in all cases where the contract price exceeds the sum of \$50,000. These bonds, in such instances, shall be written by an acceptable surety company licensed in South Carolina and meet the requirements for issuing such bonds in accordance with South Carolina law.

Bonds shall guarantee the performance by the bidder. The successful bidder shall provide bonds in accordance with the contract in an amount equal to or greater than 100% for contracts of \$50,000 or greater. All contract bonds shall be for a period of not less than one year from the date of the final payment.

The Town reserves the right to request bonds for projects under \$50,000, if it is in the best interest of the Town to do so. Such requirement will be reflected within the bidding documents.

In lieu of corporate surety, material, labor, and performance payment bonds, the successful bidder may request to post certified funds with the Town in such amounts as may be agreed upon by the Town Administrator and which funds shall be held in accordance with the terms as agreed upon between the Town and the successful bidder. Prior to approval of such request for bond alternate, a determination in writing must be made as to why the request should be granted, the overall project risk and the responsibility of the offeror which has requested such an alternate, or any other factors which may weigh heavily on granting such an approval.

Every person who has furnished labor or material to the contractor or its subcontracts for the work specified in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full before the expiration of a period of 90 days after the day on which the last of the labor was performed by such person or material was furnished or supplied by such person for which such claim is made; shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit, and to prosecute such action for the sum or sums justly due such person. Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship expressed or implied with the contractor furnishing such payment bond, shall have a right of action on the payment bond, upon giving written notice to the contractor within 90 days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such written notice to the contractor shall be personally served or served by

mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

### 5.6: Retention

Contracts that provide for installment progress payments that are based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the Town pending completion of the contract, the retained amount of each progress payment or installment shall be as agreed-upon by negotiation, but not less than 5%. When the work to be performed on a Town project by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor may be considered a separate division of the contract for the purpose of retention. As each such division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract may be released forthwith to the prime contractor, who shall, within ten days of its receipt, release to the subcontractor responsible for the completed work the full amount of any retention previously withheld by the prime contractor.

## Section 6: Professional Services

Architectural, engineering, construction management, land surveying, legal, financial, insurance, audit, banking, certain consulting services and other professional services shall be procured as provided within this subsection.

Announcements or solicitations for professional services within this section shall be advertised formally when the services are expected or anticipated to be \$50,000 or greater. Otherwise, informal solicitations are allowed. In either application, the solicitation shall include, but not limited to, the project title, the general scope of work, a description of all professional services required for the project, the submission deadline, how interested firms may apply for consideration and the evaluation criteria that shall be used for selection determination.

Submissions of information from interested persons or firms in response to an invitation shall not be less than ten days after publication of the formal invitation or the time considered fair and reasonable if the solicitation is informal.

The Town Administrator and the appropriate department head shall review and evaluate each response received using the selection criteria as reflected within the solicitation. The Town Administrator and the appropriate department head may select and hold interviews with firms or persons who have responded to the invitation and who are deemed most qualified on the basis of information available prior to the interviews.

The respondents will be evaluated using the following guidelines:

- past performance,

- the ability and availability of professional personnel,
- willingness to meet Town time and budget requirements,
- location as directly related to the complexity of the project, and especially so if the project is a joint effort being accomplished between Town staff and the person/firm,
- Recent, current and projected workloads of the firms,
- Related experience referenced from past or similar projects, and
- Any other criteria as deemed appropriate by the evaluation committee.

Based upon these evaluations, the Town Administrator shall recommend to the Council, if \$50,000 or more, the offerors which, in its judgment, are the most qualified, ranking the offerors in priority order. The selection results may be made available to all persons or firms who responded when, upon acceptance and approval by the Council.

The Town may review and evaluate each response received as a result of informal invitations and may conduct, but are not required to, conduct interviews with offerors should they determine that further information is needed. Town staff shall review and evaluate informal responses using the same or similar criteria and shall rank, in its judgement, the most qualified offerors in priority order. The selection results may be made available to all persons or firms who responded when, upon acceptance and approval of the Council, or upon the Town Administrator’s determination of the most qualified offeror.

## Section 7: Vendor Issues

Vendors sometimes call on Town departments and divisions. Although they may offer helpful information, they may also subject Town employees to high-pressure sales pitches. Town staff can direct vendors to the Comptroller. The Comptroller will gather information about their products and services and give them directions on how to register on the Town’s vendor registration program.

Because the Town, like all public agencies buys goods on an open, competitive basis, employees must not promise any vendor future business. However, employees may designate a vendor as a recommended source for future procurement needs with the Comptroller.

Departments wishing to lodge a complaint about a vendor (for poor service, failure to meet specifications, etc.) should contact the Town Administrator. The Town Administrator will attempt to resolve the problem with the vendor and will add the complaint to the vendor’s performance history file. Documentation of vendor performance issues is extremely important. Without it, the Town will not be able to disqualify vendors.

### 7.1: Resolution of Contract Controversies

This section applies to controversies between the Town and a contractor and which arises under, or by virtue of, a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other causes for contract modifications or rescission.

The Town Administrator, or authorized designee, is authorized to settle and resolve controversies, as described in this section whereby the contract amount or the amount of the controversy shall not exceed 5% of the total project cost, or an aggregate of up to \$49,999.99, whichever is greater. Any contract controversy above this amount shall be referred to the Council.

Either the Town Administrator or the Council, as applicable, shall schedule and meet with the contractor to receive and review comments, which thereafter shall issue a decision to be placed in writing within 15 business days of the meeting. The decision shall state the reasons for the action taken and inform the contractor of other rights which may be available. A copy of the decision shall be sent via certified mail or otherwise hand-delivered, email, or fax, immediately to the contractor.

A contractor, having received the notice of decision, may appeal in writing to the Mayor, who shall then convene the full Council at a time and date established by the Mayor to receive and review the comments of the contractor. The Mayor shall issue the decision of Council, in writing, within 15 business days of the Council hearing. The decision shall state the reason for the action taken. A decision rendered shall be final and conclusive unless fraudulent. The appeal decision of the Mayor and Town Council is the final administrative review and the decision of the Town, and such decision can be appealed to the Circuit Courts of the State.

## 7.2: Violations of Law

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

1. Canceled or revised by addenda if prior to the closing acceptance date of the solicitation.
2. If after the closing acceptance date of the solicitation but prior to award, the pending contract agreement shall be modified to comply with the law. Should it be determined that such a modification would have a cost impact, the Town shall have the right to:
  - a. Accept the cost impact if considered fair and reasonable,
  - b. Negotiate with the offeror,
  - c. Open negotiations with other offerors, or
  - d. Reject all offerors in their entirety.

If after an award it is determined that a solicitation or award of a contract is/was in violation of the law and the person or persons has/have not acted fraudulently or in bad faith, the Town may:

1. Modify the contract agreement by an appropriate change order agreeable to both parties to comply with the law; or
2. The Town may terminate the contract and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit for cost incurred prior to the termination.

If after an award it is determined that a solicitation or award of a contract is/was in violation of the law and the person or persons has/have acted fraudulently or in bad faith, the Town may:

1. Declare the contract null and void; or
2. At its discretion, take any other actions which are appropriate and in the best interests of the Town.

## 7.3: Authority to Debar or Suspend

The suspension and debarment process protects the Town from fraud, waste, and abuse by using tools to avoid doing business with non-responsible contractors and vendors. This section applies to a debarment for cause from consideration for award of contracts, goods, or services, or a suspension from such

consideration during an investigation where there is probable cause for such debarment. Additionally, if Federal or State monies are being utilized for the procurement, the Town will ensure that potential vendors are not listed on the Federal debarment and suspension list before awarding contracts.

The Town Administrator, after reasonable notice of debarment to the person or firm involved and reasonable opportunity for that person or firm to be heard, and having consulted with the Council and Town Attorney, shall have the authority to:

- disbar the person or firm for cause from consideration for award of contracts, goods, or services; provided that doing so is in the best interest of the Town. The debarment shall be for a period as determined by the Town Administrator, but not more than two years.
- Suspend the person or firm for cause from consideration for award of contracts, goods, or services; provided that doing so is in the best interest of the Town. The suspension shall be for a period as determined by the Town Administrator, but not more than 12 months.

The causes for debarment or suspension include:

- Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town contractor, vendor, or supplier.
- Conviction under State or Federal antitrust statutes arising out of the submission of bids, quotes, offers, contracts, or proposals;
- Violation of contract, bid, proposal or quotation provisions, as set forth below, of a character which is regarded by the Town Administrator to be so serious as to justify debarment action. This would include, deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract, bid, proposal, offer, or quotation; or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, proposals, offers, bids or quotations;
- Any other causes the Town Administrator determines to be so serious and compelling as to affect responsibility as a Town contractor, supplier or vendor, including debarment by another governmental entity for cause;
- For violation of the ethical standards set forth in the South Carolina State Ethics Act.

A contractor, supplier, or vendor shall not be considered for suspension or disbarment if the failure to perform or unsatisfactory performance were caused by acts beyond the control of the contractor, supplier, or vendor.

With the advice and consent of the Council, the Town Administrator shall issue a written decision within 30 days to debar or suspend. The decision shall be final and conclusive. The decision shall state the reason of the action taken and inform the debarred or suspended person, company, or corporation involved of their rights to a final appeal. This notice shall be sent by certified mail, hand-delivered, or by email.

## Section 8: Types of Contracts

### 8.1: Term

Subject to the limitations of this chapter, any type of contract which promotes the best interests of the Town may be used, with the exception of cost-plus-a-percentage-of-cost contract which is prohibited. A cost reimbursement, or a cost reimbursement-plus-a-fixed-fee, may be used when it is determined that such a contract would be less costly to the Town than any other type, or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

The Town's best interest shall be served by contracts originated by using competitive prices obtained by: itemized unit measurement with cost, itemized project description breakdown with costs itemized, and lump sum project cost.

### 8.2: Multi-Term

Multiterm contracts are for products, goods, and/or services of such nature that an ongoing annual requirement exists. Where and when such conditions exist, multiterm contracts should be used as much as possible to be in the best interests of the Town, as described below.

1. Multiterm contracts for supplies and services may be entered into for specified periods of time, not to exceed five years, provided the terms of the contract and the conditions for renewal or extension, if any, are included and so specified in the invitation, and that funds are provided and available for the initial term.
2. As specified within the invitation, multiterm contracts may be firm fixed pricing for one or more years. Contracts limited to annual, first-year pricing may be extended or renewed for the second and subsequent years, when prices, having been evaluated, are determined, in writing, to be fair and reasonable to the Town. Validity or justification shall be requested from and provided by the supplier in writing, addressing any requests which are considered unreasonable.
3. Multiterm contracts shall not cause undue hardship on either party. Either party may submit in writing a request for reevaluation of the contract, in whole or in part, due to extreme verifiable conditions or circumstances.
4. All multiterm contracts shall contain a "municipality" termination clause, whereby all such type contracts may be terminated by the Town, and at no cost to the Town, should fund sufficient to support continuation of performance not be appropriated or otherwise made available for subsequent fiscal period.
5. Whereas, some multiterm contracts may be established upon estimated needs and/or usage, the contract liability shall be limited to actual products, goods, or services received and accepted by the Town. Contract liability shall not be predicated on any estimated or minimum requirements.
6. Multiterm contracts may be extended on a case-by-case basis for when in the best interest of the Town. The Town may require continued performance of any contract within the limits and at the rates specified in the contract. The option provision may be exercised more than once.

### 8.3: Contract Clauses

All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. At the direction of the Town Council, the Town



Administrator, or authorized designee, may issue clauses appropriate for supply, service, or construction contracts addressing at least the following subjects:

- The unilateral right of the Town to order written changes in the work within the scope of the contract;
- The unilateral right of the Town to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract;
- Variations occurring between estimated quantities of work in a contract and actual quantities;
- Defective pricing;
- Liquidated damages;
- Specified excuses for delay or nonperformance;
- Termination of the contract for default;
- Termination of the contract, in whole or in part, for the convenience of the Town;
- Suspension of work on a construction project ordered by the Town;
- Site conditions differing from those indicated in the contract, or ordinarily encountered except that differing site condition clauses need not be included in a contract;
  - When the contract is negotiated;
  - When the contract provides the site or design; or
  - When the parties have otherwise agreed with respect to the risk of differing site conditions.
- Hazardous materials;
- Drug-free work place;
- Affirmative action.

The Town may establish standard contract clauses for use in Town contracts.

#### 8.4: Price Adjustments

A contractor shall be required to submit cost or pricing data if any adjustment in the contract price is desired. Adjustments in price resulting from the use of contract clauses shall be computed in one or more of the following means:

- By agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- By unit prices specified in the contract or subsequently agreed upon;
- By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- In such other manner as the contracting parties may mutually agree; or,
- In the absence of agreement by the parties, by unilateral determination by the Town of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and adjustment of profit or fee, as appropriate, and subject to the provisions of legal and contractual remedies.

## Section 9: Management and Disposal of Town Property Other than Real Property

The sale, lease, or disposal of surplus supplies, inventories, and other Town properties, other than real properties, shall be by in-house auction, outside auction, formal or informal bidding process, online auction services, broker services, or other appropriate competitive methods designated herein or otherwise as authorized by the Town Administrator. The sale, lease or disposition of real properties rests within the authority of full Council.

### 9.1: Salvageable Personal Property

The Town Administrator, or authorized designee, shall be responsible for all disposals of surplus or antiquated, but salvageable material, such as, but not limited to, furniture, computer equipment, automobiles, automobile and equipment parts, trucks, tractors, lawn mowers, scrap, and the like. Sales shall be awarded to the highest bidder in these processes. Funds will be turned into the Comptroller, deposited, and recorded in the Town's General Ledger, unless otherwise directed by the Comptroller per Generally Accepted Accounting Principles.

### 9.2: Non-Salvageable Personal Property

When items or articles are broken beyond repair, and it is determined that a salvage value is nonexistent, or the proceeds from the sale of such items would not offset the cost incurred to sell, then such items are articles may be disposed of with the best method(s) that serves the best interest of the Town, as determined by the Town Administrator, or designee. When it is determined that community's interest shall be best served by making donations of either surplus, antiquated or salvageable personal property to another agency, nonprofit entity or worthy individual or group, the Town Administrator, or authorized designee, may authorize such transfers of personal property whose value is determined to be \$10,000 or less.

Receipt of monetary contributions whose value is \$10,000 or less may be accepted upon authorization of the Town Administrator, or authorized designee. The authorization of transfers or receipt of monetary contributions whose value is greater than \$10,000 must be authorized by Town Council, upon a recommendation forwarded from the appropriate committee. Disbursement of monetary contributions to another agency, nonprofit entity or worthy individual or group, must be authorized by Town Council, usually considered as part of the annual or midyear budget process.

### 9.3: Seized Assets and Unclaimed Properties

All seized assets and unclaimed properties, including but not limited to, vehicles, bicycles, jewelry and other miscellaneous items, shall be disposed of pursuant to one of the following procedures:

1. The Town shall place the property within the regular operating inventory of the Town for use by the Town, subject to approval by the Chief of Police.
2. Disposal of this property shall be performed in the same manner as previously designated elsewhere herein.
3. The property or proceeds received from the disposal of this property shall be donated to a recognized nonprofit organization in an effort to promote community relations and goodwill. Proceeds, inventories and other properties, if not donated, shall be deposited into the Town's General Fund.