

MAYOR:
Bradley D. Belt

MAYOR PRO TEMPORE:
Russell A. Berner

TOWN ADMINISTRATOR:
Stephanie Tillerson

TOWN ATTORNEY:
Stafford J. McQuillin III



COUNCIL MEMBERS:
E. Luke Farrell
Madeleine Kaye
Lance Spencer

SPECIAL CALL TOWN COUNCIL
Municipal Center Council Chambers
March 17, 2025, 9:00 am

AGENDA

- I. **Call to Order:**
- II. **Pledge of Allegiance:**
- III. **Roll Call:**
- IV. **Citizens' Comments (Agenda Items Only):**
- V. **Old Business:**
None
- VI. **New Business:**
 - A. To Consider Approval of **Ordinance 2025-07** - An Ordinance to Repeal and Replace Article 4 – Finance and Taxation, Chapter 4. – Purchasing – **First Reading**
- VII. **Executive Session:**
 - A. Executive Session to receive legal advice protected by the Attorney-Client Privilege (S.C. Code Ann. 34-4-70-(a)(2)) concerning matters related to Captain Sams Spit.

The Council may take action after the Executive Session.
- VIII. **Council Member Comments:**
- IX. **Citizens' Comments:**
- X. **Adjournment:**

TOWN OF KIAWAH ISLAND

ORDINANCE 2025-07

**AN ORDINANCE TO REPEAL AND REPLACE ARTICLE 4 – FINANCE AND TAXATION,
CHAPTER 4. - PURCHASING**

WHEREAS, the Town Council of Kiawah Island, South Carolina, is committed to ensuring transparency, efficiency, and fiscal responsibility in all town procurement activities; and

WHEREAS, the Town Council has determined that the current procurement procedures in Article 4 – Finance and Taxation, Chapter 4 of the Town Code of Ordinances, require comprehensive updates to reflect best practices in municipal procurement; and

WHEREAS, the adoption of updated procurement procedures will enhance competition among vendors, improve the quality of goods and services procured, and ensure the prudent use of taxpayer funds; and

WHEREAS, the proposed procurement policy establishes clear authority, responsibilities, and methods for Town officials to follow when procuring goods and services; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF KIAWAH ISLAND, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1 Repeal and Replacement

Article 4 – Finance and Taxation, Chapter 4 of the Town Code of Ordinances is hereby repealed in its entirety and replaced with the "Procurement Policy of the Town of Kiawah, South Carolina," which is attached hereto and incorporated by reference.

Section 2 Severability

If any part of this Ordinance is held to be unconstitutional, it shall be construed to have been the legislative intent to pass said Ordinance without such unconstitutional provision, and the remainder of said Ordinance shall be deemed to be valid as if such portion had not been included. If said Ordinance, or any provisions thereof, is held to be inapplicable to any person, group of persons, property, kind property, circumstances, or set of circumstances, such holding shall not affect the circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property, or circumstances.

Section 3 **Effective Date and Duration**

This Ordinance shall be effective upon its enactment by the Town Council for the Town of Kiawah Island.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF KIAWAH ISLAND
ON THIS _____ DAY OF _____ 2025.**

Bradley D. Belt, Mayor

ATTEST:

By: _____
Petra Reynolds, Town Clerk

1st Reading:

2nd Reading:

DRAFT

PROCUREMENT POLICY OF THE TOWN OF KIAWAH, SOUTH CAROLINA
(THE “TOWN”)

I. General Provisions

A. Purpose and Policies. The underlying purposes and policies of the procedures set forth herein (the “Procedures”) are to adopt for the Town procurement practices that are appropriately competitive and that serve the mission of the Town.

B. Application of Procedures.

1. General Application. These Procedures apply only to contracts, purchases, and other procurements that are solicited or entered into after the effective date of these Procedures.

2. Reporting to Town Council. It shall be the policy of the Town that any contractual obligation of \$20,000 or greater shall be reported to the Town Council, and any proposed contractual obligation of \$100,000 or greater must also be approved by Town Council.

C. Definitions.

1. “Construction Management at-Risk” means a project delivery method in which the Town awards separate contracts, one for design services to design a project and the second to a construction manager at-risk for both construction of the project according to the design and construction management services, which include but are not limited to those professional services associated with contract administration, project management, and other services provided in connection with the administration of a construction project.

2. “Co-operative Purchasing Entity” means an organization or alliance of municipalities and/or other governmental bodies throughout the United States established in part to achieve economies of scale and/or innovations through group purchasing strategies, shared resources and/or centrally administered competitive procurement processes to afford value and discount pricing programs to its members.

3. “Design-bid-build” means a project delivery method in which the Town sequentially awards separate contracts, the first for design services to design a building project and the second for construction of the building project according to the design.
4. “Design Services” means those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture, and interior design pertaining to construction, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including without limitation studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual design, plans and specifications, construction documents, cost estimates, construction observations, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.
5. “Design-build” means a project delivery method in which the Town enters into a single contract for design and construction of a project.
6. “Design-build-finance-operate-maintain” means a project delivery method in which the Town enters into a single contract for design, construction, finance, maintenance, and operation of a project over a contractually defined period.
7. “Design-build-operate-maintain” means a project delivery method in which the Town enters into a single contract for design, construction, maintenance, and operation of a project over a contractually defined period.
8. “Mayor” means the elected mayor of the Town, or his or her designee. The Mayor shall make all decisions required under these Procedures.

9. "Operations and maintenance" means a project delivery method in which the Town enters into a single contract for the routine operation, routine repair, and routine maintenance of a building project.
10. "Procure" or "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services, equipment or construction.
11. "Public Procurement Unit" means any agency of the Federal Government, the State of South Carolina (the "State"), any agency of the State, and any county, municipality, special purpose district or any other subdivisions of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and any other entity which expends public funds for procurement of property, supplies, services, or construction.
12. "Responsible/responsive bidder" means a person or entity who (1) has the capability in all respects to perform fully the contract requirements, and has the integrity and reliability which, as substantiated by past performance and reputation, will assure good faith quality performance, and (2) has submitted a bid or proposal which conforms in all material aspects to the Invitation for Bids or Request for Proposals.
13. "Reverse Auction method" means a real-time bidding process taking place at a previously scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods.

D. Severability.

If any provision of these Procedures or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Procedures, which can be given effect without the invalid provisions or application, and to this end, the provisions of these Procedures are declared to be severable.

E. Effective Date.

These Procedures shall become effective upon approval by the Town Council.

II. Source Selection and Contract Formation

A. Methods of Source Selection. Except where noted herein, all Town contracts shall be awarded by one of the following methods:

1. Invitation for Bids; (Paragraph II. B);
2. Request for Proposals (Paragraph II. C);
3. Emergency Procurement (Paragraph II. D);
4. Sole Source (Paragraph II. E);
5. Small Purchases (Paragraph II. F);
6. Qualifications Based Selection (Paragraph II. G);
7. Reverse Auction (Paragraph II. H).

B. Invitation for Bids.

1. Notice of Invitation for Bids. An Invitation for Bids shall include (or state where such information is to be made available) a description of the supplies, services, equipment or construction item that the Town is seeking, and all contractual terms and conditions applicable to the procurement. The Invitation for Bids shall be publicly announced on the Town's website and/or South Carolina Business Opportunities.
2. Receipt and Opening of Bids. All bids shall be received electronically, and any bids received prior to the bid due date shall be kept secure and unopened. Bids will be opened electronically in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be deemed appropriate by the Mayor, together with the name of each bidder, shall be tabulated by the Mayor.

The ranking of each bidder, which need not include the dollar amounts of the bids, shall be made available to all bidders after contract award.

3. Bid Acceptance and Bid Evaluation. Subject to the Town's right not to accept any bid, as determined by the Mayor, the selected bid shall be accepted unconditionally without alteration or correction, except as otherwise authorized in these Procedures or by the Mayor. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids or addenda to such bids. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids and addenda.
4. Correction or Withdrawal of Bids, Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted within the Mayor's discretion. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted.
5. Award. If an award is to be made, the contract shall be awarded by written notice to the lowest responsible/responsive bidder. In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, an award shall be determined in the discretion of the Mayor.
6. Right of Rejection and Resolicitation. The Mayor has the right, prior to award of the contract, to reject any and all bids for cause, or without cause, as it deems appropriate. The Town, as determined by the Mayor, has the right to determine not to award the contract to any bidder or to determine to re-solicit bids based upon modified terms and conditions.

C. Request for Proposals.

1. Selection Committee. For each supply, service, equipment or construction item that the Town is seeking in which the Request for Proposal procurement selection method is used, the Mayor will establish a selection committee (the "Committee"). The Mayor may be a member of that Committee.
2. Notice of Request for Proposals. The Request for Proposals shall be publicly announced on the Town's website and/or South Carolina Business Opportunities and shall include a description of the supplies, services, equipment, or construction item being sought, enumerating all requirements for the same (or stating where such information is to be made available).
3. Receipt and Safeguarding of Proposals. All proposals shall be received electronically, and any proposals received prior to the proposal due date shall be kept secure and unopened.
4. Evaluation Factors. The Request for Proposals shall state the relative importance of each evaluation factor but need not require numerical weightings for each factor. No other factors or criteria shall be used in evaluation, and there shall be adherence to any weightings (if such are used) for each factor in the Request for Proposals. The contract file shall contain the basis on which the award is made. A determination of responsibility shall be made before award.
5. Negotiation. The Committee will review all submissions, hold interviews if desired as deemed by the Committee, determine the most qualified proposer, and negotiate a contract with the most qualified proposer. In the event a satisfactory contract cannot be negotiated with the most qualified proposer, the Mayor will negotiate a contract with the next most qualified proposer, and so on, until a satisfactory contract can be negotiated. Nothing contained herein will require the

Committee to negotiate a contract with an unqualified proposer or with a proposer who submits an unresponsive proposal.

6. Right to Withdraw and Re-solicit. Until award, the Committee has the right to determine not to award the contract to any proposer or to determine to re-solicit proposals based upon modified terms and conditions.

D. Emergency Procurement. Notwithstanding any other provision of this procedure, the Mayor may make an emergency procurement when there exists a threat to public health, welfare or safety under emergency conditions or where normal daily operations are affected; The purchasing limits, as provided for in Section I(B)(2), will be suspended during the emergency situation to prevent an interruption or delay in emergency response. The maximum amount of the emergency purchase will be limited to \$150,000. Purchases above this amount will require approval by a quorum of Town Council.

E. Sole Source. A contract may be awarded for supply, service or construction item without competition when the Mayor determines in writing that there is only one source for the required supply, service, or construction item. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are some (but not all) examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, services, systems, software, or replacement parts is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing; and
- (3) where the item is one of a kind.

F. Small Purchases. The following procedures shall pertain to purchases under \$20,000.00:

1. Purchases \$0.01—\$2,000.00. The Town Administrator or Treasurer may purchase items and/or services under \$2,000.00 as they are needed without competition.
2. Purchases \$2,000.01—\$10,000. The Town Administrator, with concurrence of the Treasurer, may purchase items and/or services between \$2,000.01—\$10,000 and that have been previously budgeted by the solicitation of written quotations, or in the alternative, firm pricing obtained through internet searches, from a minimum of three qualified sources (or, if in the Town Administrator's judgment, there are fewer than three qualified sources, from all qualified sources), and the procurement shall be from the lowest responsible/responsive source.
3. Purchases \$2,000.01—\$20,000. The Mayor may make any procurement between \$2,000.01 and \$20,000 by the solicitation of written quotations, or in the alternative, firm pricing obtained through internet searches, from a minimum of three qualified sources (or, if in the Mayor's judgment, there are fewer than three qualified sources, from all qualified sources), and the procurement shall be from the lowest responsible/responsive source.

G. Qualifications Based Selection.

1. Preparation of Project Description. The Mayor shall be responsible for developing a description of the proposed professional services project, listing the required professional services for that project, and preparing a formal invitation to firms for submission of information.
2. Public Announcement. The formal invitation shall be publicly announced on the Town's website and/or South Carolina Business Opportunities. Nothing contained herein shall preclude the Mayor from directly inviting any person to submit information.

3. Selection Committee. The Mayor shall choose a selection committee whom the Mayor determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project.
4. Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the selection committee may hold interviews with at least three firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews, or if less than three persons or firms have responded to the advertisement, the committee shall hold interviews with those that did respond. The purpose of the interviews shall be to provide such further information as may be required by the selection committee to fully acquaint itself with the relative qualifications of the interested firms.
5. Selection and Ranking of the Most Qualified. The selection committee, of which the Mayor may be a member, shall evaluate each of the firms interviewed based upon criteria set forth in the invitation. Based upon these evaluations, the selection committee shall select the firms which, in its judgment, are the best qualified. The selection committee's report ranking the firms shall be in writing and will be made available to all firms interviewed upon written request from the interviewed firms.
6. Negotiation of Contract. The Mayor shall negotiate a contract for services with the most qualified firm at a compensation that is fair and reasonable to the Town. Should the Mayor be unable to negotiate a satisfactory contract with the firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, until a satisfactory contract has been negotiated. If no agreement is reached with one of the three, additional persons or firms, in order of their competence and

qualifications, may be selected after consultation with the selection committee, and negotiations shall be continued in the same manner until agreement is reached.

H. Reverse Auction.

1. Conditions for Use. In addition to the competitive sealed bid or competitive sealed proposal methods of procurement, contracts for the sale of goods which exceed the sum of Twenty-Five Thousand (\$25,000) Dollars may be awarded by utilization of a Reverse Auction method as set forth herein.
2. Reverse Auction Procedures. In using the Reverse Auction method, the Mayor shall follow the following procedures:
 - a. Invitation for Reverse Auction Bids. The Mayor shall issue an invitation for Reverse Auction Bids, which shall include all requirements for the bids, include the specifications for the required goods, the time of delivery and the quantities required.
 - b. Public Notice. Public notice of the bids shall be given not less than seven (7) days prior to the date set forth therein for the commencement of the Reverse Auction, and such notice shall be by publication on the Town's website and/or South Carolina Business Opportunities.
 - c. Receiving Bids. Bids shall be received as set forth in the notice and other rules applicable to the Reverse Auction as may be promulgated by the Mayor and designated in the invitation for bids. The final amount of each bid and such other relevant information, together with the name of each bidder, shall be recorded in writing. This record, and each final bid, shall be open to public inspection after award.
 - d. Bid Acceptance, Evaluation and Award. Bids shall be unconditionally accepted without alteration or correction except as authorized in this Policy.

The bidder with the lowest responsive, responsible bid will be awarded the contract.

e. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate, but only upon the written approval of the Mayor. After final bids are entered, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted.

f. Determination of Responsibility upon Award. Responsibility shall be determined by the bidder's demonstrated ability to provide the goods required in conformity with the invitation for bids. In making this determination the Mayor may examine such factors as may be appropriate and relevant to the peculiar requirements of the particular contract.

g. Prequalification of Bidders. The Mayor may prequalify all prospective bidders as set forth in Section II(I) below.

I. Prequalification of Bidders.

1. The Mayor may pre-qualify all prospective bidders or proposers.
2. Notice of pre-qualification shall be publicly announced on the Town's website and/or South Carolina Business Opportunities and shall set forth the criteria (or state where such criteria are to be made available) by which the qualifications and appropriateness of prospective bidders shall be determined. Only those criteria set forth in the pre-qualification notice may be considered in pre-qualifying bidders. The Mayor shall make all pre-qualification decisions in the exercise of his reasonable discretion, and shall make a written record of the bases for its pre-qualification determinations. Prior to issuance of the Invitation for Bids or Request for Proposals, all prospective bidders or

proposers that were provided with pre-qualification notice will be notified of the Mayor's decisions relating to pre-qualification.

J. Exempted Items. The following services and/or procurements shall be exempt from the provisions of these Procedures.

1. Town Council, upon recommendation of the Mayor, may exempt by ordinance specific items, services, or projects from these Procedures when Town Council finds that such exemption is in the interest of the Town.
2. Purchases \$1,000.00 and under. These Procedures do not apply to any procurement equal to or less than \$1,000.00 where funds for such purchases are included with the budget of the Town.
3. The following Professional Services:
 - a. Accounting services;
 - b. Advertising and marketing services;
 - c. Governmental relations services;
 - d. Insurance consulting and procurement services;
 - e. Legal services;
 - f. Public relations services; and
 - g. Underwriting and financial services.

In connection with choosing a certain individual or firm to provide professional services, the Mayor shall prepare a written determination setting forth the reasons the certain individual or firm was chosen. Nothing herein shall preclude the Mayor from selecting any of the foregoing professional services pursuant to a competitive selection process.

4. Real Property. The purchase, leasing and/or sale of real property by the Town.

5. Cooperative Purchasing. The Mayor may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of products, supplies, or services with one or more Public Procurement Units or Co-operative Purchasing Entities in accordance with an agreement entered into or guidelines agreed upon among the participants.
6. Existing Contracts and Approved Vendor Lists of Other Public Procurement Units. The Mayor may Procure goods or services pursuant to an existing contract held by another Public Procurement Unit or from vendors included in a Public Procurement Unit's approved vendor list, upon a determination that such contract was awarded or vendor list approved pursuant to appropriately competitive procedures by the applicable Public Procurement Unit. Without limiting the generality of the foregoing, it is hereby declared that contracts held or vendor lists approved by the State of South Carolina or the County of Charleston for the purchase of goods or supplies were awarded or approved pursuant to appropriately competitive procedures.

III. Delivery Methods

A. Construction Project Delivery

The following construction project delivery methods are authorized:

1. Design-Bid-Build;
2. Construction Management at-Risk;
3. Operations and Maintenance;
4. Design-Build;
5. Design-Build-Operate-Maintain;
6. Design-Build-Finance-Operate-Maintain;
7. Vendor List

8. Such other project delivery method that the Mayor may approve combining one or more aspects of the delivery methods in items 1-6 above in this Section III(A).

B. Source Selection

Except as provided in Sections II(D) (Emergency Procurements) and II(E) (Small Purchases), source selection methods applicable to procurements for the project delivery methods identified in Section III(A) above shall be as follows:

1. Design-bid-build:
 - a. Design. Request for Proposals in Section II(C) above or the Qualifications Based Selection Process in Section II(G) above must be used to procure architect, engineer, and other design or professional services (including construction management where the construction manager serves as the Owner's Agent).
 - b. Construction. Invitation for Bids or Request for Proposals must be used to procure construction in design-bid-build procurements.
2. Construction Management at-risk. Invitation for Bids or Request for Proposals must be used to procure contracts for construction management at-risk.
3. Design-build. Request for Proposals must be used for the procurement of design-build.
4. Design-build-operate-maintain and Design-build-finance-operate-maintain. Request for Proposals must be used for the procurement of contracts for Design-build-operate-maintain and Design-build-finance-operate-maintain.
5. Operations and Maintenance. Invitation for Bids or Request for Proposals must be used to procure contracts for operations and maintenance.
6. Vendor's List. The Mayor is authorized to select a group or

groups of pre-qualified firms to provide services and/or supplies to the Town for one or more types of Procurements over an extended period of time (not to exceed two years).

a. Such group(s) of pre-qualified firms shall be selected pursuant to a Request for Proposals or Request for Qualifications process as set forth in this Policy.

b. The Mayor may procure services from such group(s) of pre-qualified firms through Sealed Bids or Request for Proposals, except that:

(1) Public notice shall not be required; and

(2) Where necessary the Mayor may require bids or proposals on an expedited basis (as early as Twenty-Four (24) hours).

7. Other. Invitation for Bids or Request for Proposals must be used to procure contracts for other project delivery methods authorized pursuant to Section II(A).

C. Bond and Security.

1. Bid security shall be required for all Invitations to Bid for construction contracts entered into pursuant to Article II(B). Bid security shall be one or more bonds provided by one or more surety companies meeting the criteria established by the Mayor. Bid security shall be in an amount equal to at least five percent of the bid unless a higher percentage is specified in the invitation for bids. Any bid, which does not comply with the bid security requirements, shall be rejected.

2. When a contract to improve real property exceeding \$50,000 is awarded, the following bond security shall be delivered to the Town upon or within a reasonable time after the execution of the contract and shall be binding on the parties:
 - a. A performance bond satisfactory to the Town, executed by one or more surety companies meeting the criteria established in the invitation for bids or otherwise secured in a manner satisfactory to the Town, in an amount equal to 100% of the contract price;
 - b. A payment bond satisfactory to the Town, executed by one or more surety companies meeting the criteria established in the invitation for bids or otherwise secured in a manner satisfactory to the Town, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in the amount equal to 100% of the contract price.
3. Nothing in subparagraph 2 above shall be construed to limit the authority of the Town to require a performance bond or other security in addition to the bonds specified above.
4. Bonding requirements may be waived for any emergency procurement.

IV. Disposal of Surplus Supplies.

All surplus supplies, materials and equipment which are considered salvage or surplus, may be sold to the highest responsive bidder in accordance with and upon such terms and conditions as the Mayor shall require with respect to such surplus supplies and materials, provided, however, that the Mayor may sell, lease, or dispose of any supplies, materials, or junk which has a value of less than Two Thousand (\$2,000) Dollars. The use of

GovDeals.com or some other similar internet-based auction site may be used to sell surplus supplies, materials or equipment.

V. Resolving Protests

- A. Right to Protest. Any actual or prospective bidder, proposer or contractor, who is aggrieved in connection with the solicitation or award of a contract, may protest to the Mayor. The protest, setting forth the grievance and the grounds therefor, shall be submitted in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto, but in no circumstance after fifteen days of notification of award of contract.
- B. Authority to Resolve Protests. The Mayor shall have the authority to settle and resolve a protest of an aggrieved bidder, proposer or contractor, actual or prospective, concerning the solicitation or award of a contract. If the protest is not resolved by mutual agreement within five calendar days of the notice of protest, the parties may submit the dispute to non-binding mediation, which shall be concluded within ten calendar days of the notice of protest.
- C. Decision. Should the parties fail to resolve the protest in mediation, the Mayor shall promptly issue a decision in writing, stating the reasons for the action taken. A decision of the Mayor shall be final and conclusive, and a copy of the decision shall be mailed or otherwise furnished immediately to the protestor and any other party intervening.

VI. Conflicts of Interest

- A. No member of the 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 interests in any land, material, supplies or services.
- B. Any willful violation of Section VI(A) shall constitute malfeasance in office, and any officer or employee of the Town found guilty thereof shall thereby forfeit his office or

position. Any violation of this section with the knowledge, express or implied of the person or corporation contracting with the Town shall render the contract voidable by the purchasing agent or Town Council.

CHAPTER 4. PURCHASING¹

Sec. 4-401. Purchasing agent.

The mayor, or his designee, shall be the purchasing agent for the town. The agent shall be responsible for:

- (1) The purchase of supplies, materials and equipment and contractual services required by any office, department or agency of the town government.
- (2) The storage and distribution of all supplies, materials and equipment required by an office, department or agency of the town government.
- (3) Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any office, department or agency of the town government. Such specifications should be definite and certain and shall permit competition.
- (4) Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies, or equipment stored in storerooms or warehouses.
- (5) Soliciting and maintaining an up-to-date list of qualified suppliers. The purchasing agent shall have authority to remove temporarily the names of vendors who have defaulted on their quotations, attempted to defraud the town or have failed to meet established specifications or delivery dates.
- (6) Obtaining as full and open competition as possible of all purchases, contractors and sales.

(Code 1993, § 4-401)

Sec. 4-402. Formal contract procedure.

All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$20,000.00, shall be purchased by formal written contract from the lowest responsible bidder, after due notice inviting proposals. No contract or purchase shall be subdivided to avoid the requirements of this section. All sales of personal property which has become obsolete or unusable, when the estimated value shall exceed \$20,000.00, shall be sold by formal written contract to the highest responsible bidder, after due notice inviting proposals.

(Code 1993, § 4-402)

Sec. 4-403. Informal purchase procedure (purchases under \$20,000.00).

- (a) No purchase shall be subdivided to avoid the requirements of this section. Purchase requisitions are required for all items which exceed \$100.00 per unit cost and for all non-routine purchases. A non-routine purchase is a non-recurring purchase of any special or atypical item or service. Purchase requisitions for routine items, such as office supplies, can be given directly to the purchasing agent unless the items exceed the unit cost limitation. A purchase order will also be issued and approved by the town administrator or treasurer:
 - (1) If required by vendor;

¹State law reference(s)—Political subdivisions required to adopt procurement laws, S.C. Code of Laws 1976, § 11-35-50.

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- (2) If requested by administrator or treasurer; or
 - (3) If item is in excess of \$1,000.00.
 - (b) The following procedures shall pertain to purchases under \$20,000.00:
 - (1) Purchases \$0.01—\$1,000.00. The town administrator and treasurer may purchase items and/or services under \$1,000.00 as they are needed.
 - (2) Purchases \$1,001.00—\$10,000.00. No less than three oral and/or written quotes from qualified vendors, unless on state contract, shall be obtained.
 - (3) Purchases under \$10,000.00 that are specifically budgeted can be approved by the town administrator.
 - (4) Purchases under \$5,000.00 that are not specifically budgeted can be approved by the mayor.
 - (5) Purchases between \$5,001.00 and \$10,000.00 that are not specifically budgeted can be approved by the mayor plus one councilmember.
 - (6) Purchases \$10,001.00—\$20,000.00. No less than three written quotes from qualified vendors, unless on state contract, shall be obtained. The quotes will then be presented to the ways and means committee who will review the results and approve the expenditure.
 - (c) If, after due diligence, the purchasing agent is not able to obtain three oral and/or written quotes, the purchasing agent, with concurrence by the town treasurer, may waive the bidding requirements of this section. Documentation of the steps taken to gather bids shall be maintained in the contract file as described in section 4-413.

(Code 1993, § 4-403; Ord. No. 2002-5, 10-8-2002; Ord. No. 2005-10, 12-13-2005)

Sec. 4-404. Competitive bidding.

Before any purchases or contracts for supplies, materials, equipment or services exceeding \$20,000.00 are made, the purchasing agent shall give ample opportunity for competitive bidding as set forth in sections 4-405 and 4-406. The council shall not except individual contracts, purchases or sales from the requirement of competitive bidding; provided, however, emergency purchases may be made in accordance with section 4-410.

(Code 1993, § 4-404)

Sec. 4-405. Award to lowest responsible bidder.

All contracts for town improvements, materials, equipment, or services costing more than \$20,000.00 shall be awarded to the lowest responsible bidder as defined in section 4-406(h)(2).

(Code 1993, § 4-405)

Sec. 4-406. Competitive bidding procedure.

- (a) *Invitation to bid.* The purchasing agent shall solicit bids by mail, telephone, newspaper, or by any other reasonable means designed to secure responsible bidders. Invitations to bid shall be advertised or noticed ten days prior to the date on which bids are due, unless, due to extraneous time constraints, such cannot be complied with. The notice required shall include a general description of the articles or services to be purchased, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.
- (b) *Bid deposits.* When deemed necessary by the purchasing agent, bid deposits shall be prescribed in the notices inviting bids. Upon entering into a contract, bidders shall be entitled to return of bid deposit where the purchasing agent has required such. A successful bidder shall forfeit any bid deposit required by the

purchasing agent upon failure on his part to enter into a contract within ten days after the award; provided, however, that the town, in its sole discretion, may waive this forfeiture.

- (c) *Submission and sealing.* Bids shall be submitted to the purchasing agent at the designated place no later than the date and time specified in the invitation. Bids shall be securely sealed in an envelope and shall be identified on the envelope in accordance with bid instructions.
- (d) *Opening.* Bids shall be opened in public at the time and place stated in the invitation to bid.
- (e) *Tabulation.* A tabulation of all bids received shall be available for public inspection.
- (f) *Rejection of bids.* The purchasing agent shall have the authority to reject all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby.
- (g) *Bidders in default to the town.* The purchasing agent shall not accept the bid of a vendor or contractor who is delinquent in the payment of taxes, license or other monies due to the town.
- (h) *Award of contract.*
 - (1) *Authority in agent.* The mayor shall have the authority to award contracts within the purview of this procedure, provided, however, that prior approval of the town council is given for entering into the contract and for:
 - a. Any item exceeding ten percent of the budget allocation for said item; and
 - b. Contracts not awarded to the lowest responsible bidder.
 - (2) *Lowest responsible bidder.* Contracts shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, the purchasing agent shall consider:
 - a. The ability, capacity and skill of the bidder to perform the contract or provide the service;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - g. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
 - h. The ability of the bidder to provide further maintenance and service for the use of the subject of the contract;
 - i. The number and scope of conditions attached to the bid; and
 - j. The quality of samples requested by the town.
 - (i) *Award to other than low bidder.* When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the purchasing agent and filed with the papers relating to the transaction.
 - (j) *Tie bids.* If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to the local bidder. If two or more of such bids are submitted by local bidders, the

purchasing agent shall award the contract to one of the local tie bidders by drawing lots in public. If local bidders are not involved in the tie bids, the purchasing agent shall award the contract to one of the outside tie bidders by drawing lots in public.

- (k) *Performance bonds.* The purchasing agent shall have the authority to require a performance bond, before entering into a contract, in such form and amount as the agent shall find reasonably necessary to protect the best interests of the town.

(Code 1993, § 4-406)

Sec. 4-407. Conflict of interest.

No member of the 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 interests in any land, material, supplies or services. 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 office or position. Any violation of this section with the knowledge, express or implied of the person or corporation contracting with the town shall render the contract voidable by the purchasing agent or town council.

(Code 1993, § 4-407)

Sec. 4-408. Compliance with state laws.

In all actions involving the procurement of supplies, services, or construction for the town, the provisions of chapter 31, title 8 (State Ethics Act), S.C. Code of Laws 1976 shall be complied with and observed.

(Code 1993, § 4-408)

Sec. 4-409. Cooperative purchasing.

The purchasing agent shall have authority to join with other units of government in cooperative purchasing plans when the best interests of the town would be served thereby; provided, that the purchasing agent of the town is given the authority to make purchases of supplies and equipment through the property division of the state budget and control board and of professional services with the county, without the formality of publication and receiving of competitive bids.

(Code 1993, § 4-409)

Sec. 4-410. Emergency procurement.

Notwithstanding any other provision of this procedure, the mayor, or his designee, may make an emergency procurement when there exists a threat to public health, welfare or safety under emergency conditions or where normal daily operations are affected; the purchasing limits, as provided for in the informal purchase procedures outlined in section 4-403, will be suspended during the emergency situation to prevent an interruption or delay in emergency response. The maximum amount of the emergency purchase will be limited to \$150,000.00. Purchases above this amount will require approval by a quorum of town council.

(Code 1993, § 4-410; Ord. No. 2014-03, § 2, 4-1-2014)

Sec. 4-411. Purchases from petty cash.

A purchase of less than \$25.00 may be made from petty cash if approved by the mayor, town treasurer, or town administrator.

(Code 1993, § 4-411)

Sec. 4-412. Sole source procurement.

- (a) A contract may be awarded for supply, service or construction item without competition if the mayor and the town's purchasing officer determine in writing that there is only one source for the required supply, service or construction item. Except for contracts with a total potential value of \$20,000.00 or less, public notice of the intent to award without competition shall be posted on the town's website at least five business days prior to awarding a contract.
- (b) Written documentation must include the determination and reasonably detailed basis for the proposed sole source procurement.

(Code 1993, § 4-412; Ord. No. 2023-13, § 2, 9-5-2023)

Sec. 4-413. Maintenance of records.

All written records pertaining to the solicitation, award and performance of a contract shall be maintained in a contract file in the town offices and shall be open to public inspection.

(Code 1993, § 4-413)

Sec. 4-414. Surplus stock.

- (a) The purchasing agent shall have authority to transfer stock or surplus supplies to other offices, departments or agencies of the town.
- (b) If the purchasing agent deems it appropriate, surplus stock and supplies can be given to charity or to another public entity; provided, however, that prior approval is given by the town administrator for items with an estimated value up to \$500.00; by the mayor for items with an estimated value up to \$5,000.00; and by council for items with an estimated value over \$5,000.00, but less than \$20,000.00.
- (c) If deemed appropriate and approved by town council, surplus stock and supplies may be auctioned off to the highest bidder at an auction that has been noticed in a paper of general circulation. Written bids will be accepted on all surplus stock and supplies that have been listed in the auction bulletin. The auction bulletin shall describe each item and its fair market value. Employees, councilmembers and their immediate families are not eligible to bid on auction items.
- (d) Surplus stock and supplies with an estimated value exceeding \$20,000.00 shall only be sold by formal written contract to the highest responsible bidder, after due notice inviting proposals.

(Code 1993, § 4-414)

Sec. 4-415. Professional services.

- (a) *Public announcement.* It is the policy of the town to publicly announce all requirements for architectural, engineering, land surveying and other professional services and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement of architectural, engineering, land surveying and other professional services, the mayor or his designee shall request firms to submit a statement of qualifications and performance data.
- (b) *Selection process.* The mayor or his designee shall conduct discussions with no less than three firms regarding the contract and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the town.
- (c) *Negotiation.* The mayor or his designee shall negotiate a contract with the highest qualified firm for architectural, engineering, land surveying or other professional services at a compensation which is

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considered to be fair and reasonable to the town. In making this decision, the mayor or his designee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the mayor or designee be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The mayor or his designee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the mayor or his designee shall then undertake negotiations with the third most qualified firm. Should the mayor or his designee be unable to negotiate a contract with any of the selected firms, the mayor or his designee shall select additional firms in order of their competence and qualifications, and the mayor or his designee shall continue negotiations in accordance with this section until an agreement is reached.

(Code 1993, § 4-415; Ord. No. 2023-13, § 2, 9-5-2023)