

TOWN OF SEABROOK ISLAND

ORDINANCE NO. 2021-13

ADOPTED OCTOBER 26, 2021

AN ORDINANCE AMENDING THE TOWN CODE FOR THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA; CHAPTER 2, ADMINISTRATION; ARTICLE V, FINANCIAL ADMINISTRATION; DIVISION 2, PURCHASING REQUIREMENTS; SO AS TO AMEND THE POLICIES AND PROCEDURES RELATED TO THE PROCUREMENT OF GOODS AND SERVICES BY THE TOWN

WHEREAS, on March 10, 1988, the Mayor and Council of the Town of Seabrook Island adopted a procurement ordinance (Ord. No. 1988-03), as required by S.C. Code Sec. 11-35-5320 and S.C. Code Ann. Regs. 19-445.2155; and

WHEREAS, the town's procurement ordinance was subsequently amended on January 12, 1995 (Ord. No. 1994-11) and June 26, 2008 (Ord. No. 2008-02); and

WHEREAS, the Mayor and Council desire to amend the town's procurement ordinance so as to update various policies and procedures related to the sourcing of goods and services by the town; and

WHEREAS, the Mayor and Council advertised and held a public hearing on the proposed amendments during a duly called meeting on October 26, 2021; and

WHEREAS, the Mayor and Council believe it is fitting and proper to amend the Town Code to achieve the objectives referenced herein;

NOW, THEREFORE, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, **BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE TOWN OF SEABROOK ISLAND:**

SECTION 1. Amending Chapter 2, Article V, Division 2 of the Town Code. The Town Code for the Town of Seabrook Island, South Carolina; Chapter 2, Administration; Article V, Financial Administration; Division 2, Purchasing Requirements; is hereby amended to read as follows:

DIVISION 2. - PURCHASING REQUIREMENTS

Sec. 2-285. Authority and purpose.

- (A) *State law reference.* This division is adopted pursuant to and in compliance with Sec. 11-35-5320 of the S.C. Code of Laws, 1976, as amended, and S.C. Code Ann. Regs. 19-445.2155.
- (B) *Purpose.* The purpose of this division is to maximize the purchasing value of public funds, to provide safeguards for maintaining quality and integrity within the procurement system, and to provide for the fair and equitable treatment of all parties in the procurement process.

Sec. 2-286. Definitions.

(A) As used in this division, the following definitions shall apply:

- (1) "Invitation for bids" or "IFB" means a written or published solicitation issued by the procurement officer for bids to contract for the procurement or disposal of stated supplies, services, information technology, or construction, which will ordinarily result in the awarding of a contract or purchase order to the responsible bidder making the lowest responsive bid.
- (2) "Most advantageous" means an offer, proposal, or response which has been judged by the town to be most beneficial based on the evaluation criteria contained within the RFP. In addition to cost, the evaluation criteria may include other factors, including, but not limited to:
 - (a) The vendor's qualifications to provide the goods or services;
 - (b) The vendor's approach to providing the goods or services;
 - (c) The vendor's sufficiency of financial resources;
 - (d) The vendor's ability to deliver the goods or services in a timely manner;
 - (e) The vendor's quality of workmanship;
 - (f) The vendor's character, integrity, judgment, reputation, and experience;
 - (g) The vendor's history of satisfactory performance with similar projects;
and
 - (h) The vendor's knowledge of, and ability to comply with, associated legal or regulatory requirements.
- (3) "Procurement" means the process and procedure for buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction. It also includes all functions that pertain to the obtaining of any supply, service, information technology, or construction, including the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
- (4) "Procurement officer" means the person who is authorized by the town to administer the procurement of all supplies, services, information technology and construction, as well as the management and disposal of surplus supplies and equipment, in accordance with the provisions of this division. The procurement officer shall act under the direction of the Mayor and shall organize and execute all procurement activities for the town as set forth in this division. For purposes of this division, the Town Administrator is designated as the procurement officer for the town.

- (5) "Professional services" means unique, technical, and/or infrequent functions performed by an independent contractor qualified by education, experience, and/or technical ability to provide services. In most cases, these services are of a specific project nature, and are not a continuing, ongoing responsibility of the institution. The services rendered are predominately intellectual in character even though the contractor may not be required to be licensed. Professional service engagements may involve partnerships, corporations, or individuals. Examples of professional services may include, but are not limited to, accountants, architects, attorneys, auditors, biologists, engineers, environmental consultants, financial advisors/planners, land use planners, management consultants, marketing and advertising services, physicians, and real estate appraisers.
- (6) "Request for proposals" or "RFP" means a written or published solicitation issued by the procurement officer for proposals to provide supplies, services, information technology, or construction which ordinarily results in the awarding of a contract to the responsible offeror whose proposal is deemed to be most advantageous to the town based on the evaluation criteria contained within the RFP.
- (7) "Request for qualifications" or "RFQ" means a written or published solicitation issued by the procurement officer for the purpose of obtaining qualification and performance data from vendors, including, but not limited to, financial capability, reputation, experience, and competency, which will ordinarily result in the subsequent issuance of an IFB or RFP to a "short list" of vendors deemed qualified by the town.
- (8) "Responsible bidder or offeror" means a vendor who is determined by the town to have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.
- (9) "Responsive bidder or offeror" means a vendor who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids, request for proposals or request for qualifications.
- (10) "Successful bidder" means the vendor whose bid or proposal has been selected as the "lowest responsible" or "most advantageous," depending on the procurement method used.
- (11) "Surplus property" means any materials, supplies, equipment or other goods which, in the opinion of the procurement officer, have no further beneficial usefulness to the town or cannot economically be made useful to the town.
- (12) "Vendor" means a person, company or firm who sells goods or services.

Sec. 2-287. Compliance with other laws and regulations.

- (A) *State and federal law supersedes.* Nothing in this division shall prevent any town official or employee from complying with the terms and conditions of state or federal laws and/or regulations which may be applicable, including those which may be less restrictive than the policies and procedures contained herein.
- (B) *Other requirements.* Procurement which involves the expenditure of federal assistance, contract funds, or any grants, gifts, or bequests, shall comply with such federal and state laws and authorized regulations as are mandatorily applicable regardless of whether they are presently reflected in this division.

Sec. 2-288. Ethical procurements.

- (A) *Applicability of State Ethics Act.* The requirements of Title 8, Chapter 13 (Ethics, Government Accountability and Campaign Reform Act), of the S.C. Code of Laws, 1976, as amended, shall be complied with and observed in all actions involving the procurement of goods and 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 or her office or position.
- (B) *Good faith.* Every contract or duty imposes an obligation of good faith in its negotiation, performance or enforcement. As used in this division, the term "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.
- (C) *Voidability of contracts.* Any violation of this section with the knowledge, whether expressed or implied, of the vendor contracting with the town shall render the contract voidable by the Town Administrator or the Town Council.

Sec. 2-289. Procurement limitations and authorization.

- (A) *Procurement policy.* It is the town's policy to develop competition to ensure maximum purchasing value for all procurement activities. The procurement officer shall have the discretion to use a more stringent purchasing procedure if he or she determines that doing so would better serve the town's interest. When deemed appropriate, the procurement officer may utilize the services of advisory committees and/or outside consultants to assist with the preparation of IFB's, RFP's and RFQ's; the review and evaluation of bids, proposals, and qualifications; and the review, negotiation, and awarding of contracts and purchase orders. No contract or purchase order may be subdivided to avoid the requirements of this section.
- (B) *Purchasing procedures.* The procurement of goods and services shall be executed as follows:
 - (1) *Under \$5,000.00: Open Market.*
 - (a) Competitive bidding is not required.

- (b) The procurement officer shall have the authority to purchase goods and services on the open market using a reasonable effort to obtain pricing at or below prevailing market rates.

(2) *\$5,000.00 to \$24,999.99: Written Quotes.*

- (a) Competitive bidding shall be required. The procurement officer shall solicit written quotes from at least three vendors.
- (b) If the purchase was specifically budgeted in the current fiscal year budget and the lowest responsible bid is less than or equal to the amount budgeted, the procurement officer shall have the authority to award a contract or purchase order to the successful bidder.
- (c) If the purchase was not specifically budgeted in the current fiscal year budget or the lowest responsible bid exceeds the amount budgeted, the procurement officer shall obtain prior approval from the Mayor, subject to the limitations contained in Sec. 2-260(b), before awarding a contract or purchase order to the successful bidder.

(3) *\$25,000.00 to \$49,999.99: Informal Solicitations for Bids or Proposals.*

- (a) Competitive bidding shall be required. The procurement officer shall issue a written IFB or RFP, depending on the procurement method used. The procurement officer shall solicit written bids or proposals from at least three vendors.
- (b) The procurement officer shall review and evaluate all bids or proposals in a timely manner and shall recommend a successful bidder to the Mayor.
- (c) Subject to the limitations contained in Sec. 2-260(b), the Mayor shall have the authority to award a contract or purchase order to the successful bidder.

(4) *\$50,000.00 or Greater: Formal Solicitations for Bids or Proposals.*

- (a) Sealed, competitive bidding shall be required.
 - 1. *Invitation.* The procurement officer shall issue a written IFB or RFP, depending on the procurement method used. The procurement officer may, at his or her discretion, issue a written RFQ for the purpose of identifying a "short list" of pre-qualified vendors prior to the issuance of an IFB or RFP. Bid packages shall be advertised in a newspaper of general circulation within the town, on the South Carolina Business Opportunities (SCBO) website, and on the town's website, at least ten (10) days prior to the due date, except in cases with extraneous time

constraints. Additional methods of notification may be used at the discretion of the procurement officer.

2. *Bid package.* At a minimum, the bid package shall contain the following:
 - i. Instructions for completing and submitting a sealed bid or proposal, including the deadline for the receipt of all bids;
 - ii. A detailed description of the goods or services to be purchased;
 - iii. An explanation of the criteria to be used in the evaluation of bids and proposals;
 - iv. Whether a bid security is required and the amount of same;
 - v. The date, time and location of the bid opening; and
 - vi. Any other items or information deemed appropriate by the procurement officer.
3. *Bid security.* When deemed necessary by the procurement officer, a bid security, not to exceed five percent (5%) of the total bid amount, shall be required. A successful bidder shall forfeit his or her bid security upon failure to enter into a contract with the town within ten (10) days after the issuance of a notice of award; provided, however, the town, in its sole discretion, may waive or reduce this forfeiture.
4. *Submission and sealing.* Bids shall be received by the procurement officer at the designated location no later than the date and time specified in the invitation. Late bids shall not be accepted. Bids shall be securely sealed in an envelope and shall be identified on the envelope in accordance with instructions contained in the bid package.
5. *Opening.* Bids shall be opened and read publicly at the date, time, and location specified in the bid package.
6. *Tabulation.* A tabulation of all bids received shall be available for public inspection.
7. *Rejection of bids.* The procurement officer shall have the authority to reject all bids, or parts of bids, when the public interest will be served thereby.

8. *Bidders in default to the town.* The procurement officer shall have the authority to reject bids from any vendor who is delinquent in the payment of taxes, license fees or other monies due to the town.

9. *Review and recommendation of bids.* The procurement officer shall review and evaluate all bids or proposals in a timely manner and shall recommend a successful bidder to the Mayor. The Mayor shall review the procurement officer's recommendation and submit a final recommendation of the successful bidder to the Town Council.

10. *Award.* The Town Council shall have the authority to award a contract or purchase order to the successful bidder.

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

(e) *Exception for construction contracting administration.* Notwithstanding the preceding, 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. Any request to use an alternate form of construction contracting administration for a particular construction project must receive prior approval by the Town Council.

(C) *Exceptions.* Exceptions to bidding include the sole source, professional services, emergency procurements, purchasing cooperatives, and critical procurements as defined below.

(1) *Sole source.* Sole source procurement is acceptable when, after a good faith review of all possible sources, it is determined by the procurement officer that there is only one viable source from which to obtain the goods or services. Sole source procurements shall be executed as follows:

(a) For goods and services with an estimated value of less than \$50,000.00, the procurement officer shall submit a written request to the Mayor outlining the justification for sole source procurement. Subject to the limitations contained in Sec. 2-260(b), the Mayor shall have the authority to approve the sole source procurement if he or she deems the request to be justified.

(b) For goods and services with an estimated value of \$50,000.00 or greater, the procurement officer shall submit a written request to the Mayor

outlining the justification for sole source procurement. If the Mayor determines that the sole source procurement is justified, he or she shall submit the request to the Town Council for consideration. Town Council shall have the authority to approve the sole source procurement.

- (2) *Professional services.* Contracts for the procurement of professional service are exempt from the provisions of this ordinance. Such contracts may be negotiated on a fee basis rather than competitive bidding. Subject to the limitations contained in Sec. 2-260(b), the Mayor shall have the authority to approve professional service contracts with a value of less than \$50,000.00. All other professional service contracts shall be approved by the Town Council.
- (3) *Emergency procurements.* Notwithstanding the requirements of this division, the Mayor may make, or authorize others to make, emergency procurements where there exists a threat to public health, welfare, or safety under emergency conditions; where normal daily operations are affected or in jeopardy; or when a critical situation exists where time does not permit for ordinary solicitation or re-solicitation.
- (4) *Purchasing cooperatives.* In the event the town is eligible to purchase goods or services through a "term" contract or purchasing cooperative offered by the State of South Carolina or any of its agencies, Charleston County or other South Carolina Counties, the Municipal Association of South Carolina or other South Carolina municipalities, the U.S. General Services Administration, or other similar public entities, the procurement officer may purchase such goods and services under the "term" contract or purchasing cooperative without seeking competitive bids or proposals; provided, however, if the purchase was not specifically budgeted in the current fiscal year budget or the purchase price exceeds the amount budgeted, the procurement officer shall obtain prior approval from the Mayor, subject to the limitations contained in Sec. 2-260(b), before purchasing the goods or services.
- (5) Purchase and sale of real property.
 - (a) When the town desires to purchase real property for public use, the following procedures shall be followed:
 1. The property shall be appraised by a licensed South Carolina certified general real estate appraiser.
 2. The Mayor, or an individual designated by the Mayor, may commence contractual negotiations to purchase the property.
 3. Contractual negotiations may be discussed with Town Council in executive session, as provided for by the S.C. Freedom of Information Act.

4. Town Council shall make the final determination as to whether to contract for purchase of the property.

(b) When the town desires to sell surplus real property, the following procedures shall be followed:

1. The property shall be appraised by a licensed South Carolina certified general real estate appraiser.

2. Contiguous property owners shall be informed of the town's intent to sell the property and shall be afforded the opportunity to negotiate a contract to purchase the property.

3. If more than one of the contiguous property owners desires to purchase the property, the Mayor, or an individual designated by the Mayor, may commence contractual negotiations for the sale of the property to the contiguous property owner making the highest offer above the appraised value.

4. If none of the contiguous property owners desire to purchase the property or a contract with a contiguous property owner is not successfully negotiated, the procurement officer shall solicit offers to purchase the property by issuing an IFB.

5. The Mayor, or an individual designated by the Mayor, may commence contractual negotiations with the highest bidder.

6. Contractual negotiations may be discussed with Town Council in executive session, as provided for by the S.C. Freedom of Information Act.

7. Town Council shall make the final determination as to whether to contract for the sale of the real property.

(c) The procedures for the purchase of real property shall not apply to the acquisition of real property to be used by the town for pump stations, lift stations, pressure reducing valve sites, public streets, water lines, sanitary sewer lines, storm drainage lines, monitoring sites, mitigation sites, stormwater projects and utility easements.

Sec. 2-290. Protest procedures and remedies.

(A) Any prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation of a contract may protest to the procurement officer. No other person or entity shall have right of action resulting from any alleged violation of this ordinance and there is no implied right to protest or right of action for any other person or entity. Any such protest must be delivered in writing within five (5) business days of the issuance of

the IFB or RFP, or within five (5) business days of the issuance of any amendment thereto if the amendment is at issue.

- (B) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract may protest to the procurement officer. Any such protest must be delivered in writing within five (5) days of the date the notice of award or intent to award is issued by the procurement officer.
- (C) A protest must set forth all specific grounds of protest in detail and explain the factual and legal basis for each issue raised.
- (D) The procurement officer may conduct any inquiries or conduct any hearings he or she deems necessary to reach his or her decision.
- (E) Within ten (10) days of receipt of the written protest, the procurement officer shall issue his or her decision in writing and send copies to all parties to the protest.
- (F) If the procurement officer finds in favor of the protestant, he or she may award the protestant its documented bid preparation costs and other damages, not to exceed a total of \$5,000.00.
- (G) Contracts shall not be stayed pending the decision of the procurement officer. The protestant's remedies set forth herein shall be the protestant's exclusive remedy, including any remedy for violation of this ordinance.
- (H) A protestant may appeal the decision of the procurement officer to the Mayor by requesting a review, in writing, with the Mayor within five (5) business days of the procurement officer's decision. No new issues will be considered by the Mayor on appeal. The Mayor may appoint a special committee to consider any such appeals. The decision of the Mayor, or any special committee appointed by the Mayor, shall be final.

Sec. 2-291. Open records.

The procurement officer 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 S.C. Freedom of Information Act.

Sec. 2-292. Disposal of surplus property.

- (A) *Authority.* The procurement officer shall be responsible for management and disposal of all surplus property, excluding real property. The authority to sell, lease or dispose of real property rests solely with Town Council.
- (B) *Disposal procedures.* The procurement officer may dispose of surplus property as follows:
 - (1) Items with an estimated value of less than \$500.00 may be sold on the open market without formal advertisement or competitive procedures. Such items

may also be donated to local not-for-profit organizations which provide charitable services within community.

- (2) Items with an estimated value of \$500.00 or more shall be sold using one or more of the following competitive methods: in-house auction, outside auction, formal or informal bidding process, online auction services, broker services, or similar competitive methods recommended by the procurement officer and approved by the Mayor.

SECTION 2. Severability.

If any section, subsection, paragraph, clause, or provision of this ordinance shall be deemed to be unconstitutional, unenforceable, or otherwise invalid by the final decision of a court of competent jurisdiction, it shall be construed to have been the legislative intent of Town Council to pass said ordinance without such unconstitutional provision, and the validity of all remaining sections, subsections, paragraphs, clauses, or provisions of said ordinance shall not be affected thereby. If said ordinance, or any provision thereof, is held by the final decision of a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

SECTION 3. Conflicting Ordinances Repealed.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. Effective Date.

This ordinance shall be effective from and after the date of adoption.

SIGNED AND SEALED this 27TH day of OCTOBER, 2021, having been duly adopted by the Town Council for the Town of Seabrook Island on the 26TH day of OCTOBER, 2021.

First Reading: September 28, 2021
Public Hearing: October 26, 2021
Second Reading: October 26, 2021

TOWN OF SEABROOK ISLAND



John Gregg, Mayor

ATTEST



Katharine E. Watkins, Town Clerk