Memo

Town of Bluffton
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To: Mayor and Council

From: Trisha Greathouse, Assistant Director of Finance / Administration

Date: November 8, 2016

Subject: Amended Purchasing Ordinance

Recommendation: Town Council adopts the amended Purchasing ordinance (Chapter 2 Article IX) attached.

Background: To align with the State Procurement Code and to implement best practices within the Towns purchasing process, Staff recommends amending the Purchasing ordinance so that the procurement process for products, services and project developments with low risk will be expedited in their acquisitions.
No changes since first reading.

Action: The following sections will be amended as follows:

Sec. 2-269 *Conditions for use*: All Town contracts shall be awarded by competitive sealed bidding except as otherwise provided in section pertaining to authority to contract for certain services. Competitive sealed bidding is not required for small purchases (less than ~~$25,000~~ $50,000); sole source procurement; emergency procurements; architect engineer, construction management, land surveying, design-build, and other professional services; cooperative purchasing; and usage of GSA/State contracts.

- Staff is currently required to perform the competitive sealed bidding process when the acquisition of goods and/or services exceeds $25,000 (Article IX, Section 2-269 and Section 2-272). However, to align with the State of South Carolina's Procurement code (Title 11-35-1520), Staff recommends increasing our threshold from $25,000 to $50,000, except in the case of professional services which shall remain at $25,000 as required under state code. Informal solicitations will still be required to be advertised on the Town's website for acquisitions between $10,000 and $50,000.

Sec. 2-272 *Small purchases*: The Town Manager shall determine the methods for small purchases not exceeding ~~$25,000~~ $50,000.

- Staff is currently required to perform the competitive sealed bidding process when the acquisition of goods and/or services exceeds $25,000 (Article IX, Section 2-269 and Section 2-272). However, to align the State of South Carolina's Procurement code (Title 11-35-1520), Staff recommend increasing our

  threshold from $25,000 to $50,000, except in the case of professional services which shall remain at $25,000 as required under state code. By doing so, this would require the Town Manager or designee to determine the methods for small purchases not exceeding $50,000. Examples of small purchase methods would be informal solicitations in the forms of Request for Quotes and Request for Proposal's.

No changes since first reading
Attachment: Amended Purchasing Ordinance

PROPOSED REVISIONS TO CHAPTER 2 - ARTICLE IX PURCHASING ORDINANCE

Sec. 2-263. Title

This ordinance shall be known and may be cited as the "Town of Bluffton Purchasing Ordinance".

Sec. 2-264. Intent: Policy

Legislative Intent. Town Council directs that Town government should provide effective services to the citizens of the Town in a competitive, efficient and economical way. Further, all purchases of goods and services needed to provide these services should be obtained efficiently and economically.

Sec. 2-265. Definitions

(a) Architect, Engineer and Land Surveying Services: Those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(b) Bluffton Town Limits: This term means the land within the incorporated boundaries of the Town as amended from time to time.

(c) Business: Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other private legal entity.

(d) Confidential Information: Information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.

(e) Construction:

(i) The process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

(ii) Construction Management Services, Design-Build Services,or Turnkey Management Services. Approaches to construction contract management that allow for the selection of a single firm to perform and/or manage the complete design and construction of a project.

(f) Contract: All types of Town agreements, regardless of how they may be styled, for the procurement or disposal of supplies, services, tangible goods or construction.

(g) Contract Modification: Any written alteration in specification, delivery point, rate of delivery period, performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(h) Contractor: Any person or entity having a contract with the Town.

(i) Cooperative Purchasing: Procurement conducted by, or on behalf of, more than one Public Procurement Unit.

(j) Designee: A duly authorized representative of a person with formal responsibilities under the Ordinance.

(k) Economic Interest: An interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only Economic Interest or reasonably foreseeable benefit that may accrue is incidental to the position.

(l) Electronic: Anything computerized, electrical, digital, magnetic, optical, electromagnetic, biometric, or any other technology that is similar to these technologies.

(m) Electronic Commerce: Refers to the use of computer technology resources in which business trade is conducted electronically.

(n) Electronic Record: A record generated, communicated, received, or stored by electronic means.

(o) Electronic Signature: Any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the party using it to have the same force and effect as a manual signature.

(p) Expendable Supplies: All tangible supplies other than nonexpendable supplies.

(q) Invitation For Bids (IFB): A written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

(r) Local Preference Certification:

(i) Company maintains a local office within the legally defined boundaries of Beaufort County, has a majority of full time employees, chief officers and managers regularly conducting work at this location, properly licensed for commercial operations, is open to the public, and is in compliance with local zoning requirements.

(ii) Company has held a valid Town Business License for a consecutive period of at least two (2) years prior to application for certification.

(iii) Company has submitted an approved Local Preference Certification statement.

(s) Minority and Disadvantaged Business: A business which is owned or controlled by a majority of persons, who have been potentially deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages and/or owned and operated by a person considered to fall within the category of a minority group. Such groups include, but are not limited to, women, African Americans, Hispanic Americans, and Native Americans.

(t) Nonexpendable Supplies: All tangible supplies having an original acquisition cost of over $2,500 per unit and a probable useful life of more than one year.

(u) Offeror: Any person or entity responding to a Town solicitation (IFB, RFP, RFQ, etc.).

(v) Procurement: The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction services. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

(w) Procurement Agent: The person designated as the head of purchasing for the Town.

(x) Public Procurement Unit: Any town, city, or other subdivision of the State or public agencies of any such subdivision, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of property, supplies, services, construction, or any association which limits membership to governmental units.

(y) Request for Proposals (RFP): A written or published solicitation issued by an authorized procurement officer for proposals to provide supplies, services, or construction services which ordinarily result in the award of the contract to the

responsible bidder making the proposal determined to be most advantageous to the Town. The award of the contract must be made on the basis of evaluation factors which must be slated in the RFP, and must include, but not be controlled alone by, the factor of price proposed to be changed.

(z) Request for Qualifications (RFQ): A written or published solicitation for qualifications for professional services. A RFQ may be used to determine available services or to negotiate a contract upon evaluation of responses.

(aa) Responsible Bidder: A person who has the capability in all respects to perform fully the contract requirements, and the experience, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(bb) Responsive Bidder: A person who has submitted a bid which conforms in all material respects to the requirements set forth in the Invitation For Bids.

Sec. 2-266. Public Access to Procurement Information

(a) Procurement information shall be a public record to the extent required by South Carolina Code Ann. §30-4-10 et seq. (The Freedom of Information Act). Commercial or financial information obtained in response to a "Request for Proposals" or any type of bid solicitation, or "Request for Qualifications", which is proprietary, privileged and confidential shall not be disclosed as well as other information which may be exempt from disclosure. FOIA requests shall be made by the Town Manager.

(b) Receipt and safeguarding of bids. All sealed bids, including modifications, received prior to the time of opening shall be kept secure by the Town Clerk. If an Invitation for Bid is cancelled, bids shall be returned to the bidders. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the Town Clerk. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids number, and his signature, and then shall immediately reseal the envelope.

Sec. 2-267. Procurement Agent Designated

The Town Manager or designee shall serve as the Procurement Agent for the Town.

Sec. 2-268. Authority to contract for certain services

(a) Town Attorney: Shall be awarded by Town Council.

(b) Independent Audit Services: Auditing services contract shall be awarded by Town Council upon recommendation of Town Manager.

Sec. 2-269. Competitive Sealed Bidding

(a) Conditions for use: All Town contracts shall be awarded by competitive sealed bidding except as otherwise provided in sections pertaining to authority to contract for certain services. Competitive sealed bidding is not required for small purchases (less than~~$25,000~~$50,000); sole source procurement; emergency procurements; architect, engineer, construction management, land surveying, design-build, and other professional services; cooperative purchasing; and usage of GSA/state contracts.

(b) Public notice: Adequate public notice of the invitation for bids shall be given a reasonable time, not less than 15 calendar days, and prior to the date set forth therein for the opening of bids unless a shorter time is deemed necessary for a particular procurement by the Procurement Agent. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date and time of bid opening.

(c) Bid opening: Bids shall be opened publicly 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 deemed appropriate, together with the name of each bidder, shall be recorded by the Town Clerk or designee.

(d) Bid acceptance and bid evaluation: Bids shall be unconditionally accepted without alteration or correction, except as authorized in this ordinance. Bids shall be evaluated based on the requirements set forth in the invitation for bids which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

Sec. 2-270. Competitive Sealed Proposals

(a) Conditions for use: When the Procurement Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Town, a contract may be entered into by use of the competitive sealed proposals method.

(b) Request for proposals: Competitive sealed proposals should include, but not be limited to, the general scope of the proposal, criteria for selection, information required to be submitted, activities to be performed, and relevant costs. An award shall be made to the offeror whose proposal is considered to be most advantageous to the Town.

(c) Public notice: Adequate public notice of the request for proposals shall be given in the same manner as public notice for competitive sealed bidding, except the minimum time shall be 15 calendar days, unless a shorter time is deemed necessary for a particular procurement by the Procurement Agent.

Sec. 2-271. Request for Qualifications

(a) Conditions for use: When the Procurement Agent determines that the use of

competitive sealed bidding is either not practicable or not advantageous to the Town for professional services, a contract may be entered into by use of a Request for Qualifications.

(b) Request for qualifications: Qualifications should include but not be limited to the contractor's experience, qualifications, general expectations of the contractor and criteria for selection.

(c) Public notice: Adequate public notice of the request for qualifications shall be given in the same manner as provided in pertaining to public notice for competitive sealed bidding, except the minimum time shall be 15 calendar days, unless a shorter time is deemed necessary for a particular procurement by the Procurement Agent.

Sec. 2-272. Small Purchases

The Town Manager (or designee) shall determine the methods for small purchases not exceeding ~~$25,000~~$50,000.

Sec. 2.273. Sole Source Procurement

A Town contract may be awarded without competition when the Town Manager or designee, determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item or an item has a unique characteristic, extreme durability or other quality not found in competitors' products. All such contracts shall be reported to Town Council.

Sec. 2-274. Emergency Procurements

The Town Manager or designee may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to the functioning of Town government; for the preservation or protection of property; or for the health, welfare or safety of any person, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. Any such procurement shall be reported to Town Council.

Sec. 2-275. Extraordinary Procurements

The Procurement Agent may take action necessary to make procurements when substantial savings are only available during a limited time period; provided, however, that such savings are documented by the Procurement Agent. Any such procurement shall be reported to Town Council.

Sec. 2-276. Cooperative Purchasing Authorized

The Procurement Agent may either; participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction services with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units. Examples of such cooperative purchasing is State of

South Carolina contracts, General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and U.S. Communities.

Sec. 2-277. Cancellation and rejection of invitations for bids or request for proposals

Under this ordinance, an invitation for bids, a request for proposals, or any other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part, when it is for good cause and in the best interests of the Town, in the Town's sole discretion.

Sec. 2-278. Bid performance bonds on supply or service contracts

Bids and performance bonds or other security may be requested for supply contracts or service contracts as the Procurement Agent deems advisable to protect the Town's interests.

Sec. 2-279. Bid security on construction contracts

(a) Bid security may be required for all competitive sealed bidding for construction contracts when the price is estimated by the Procurement Agent to exceed $100,000. Bid security shall be a bond provided by a surety company authorized to do business in the state or the equivalent in cash, or otherwise supplied in a form satisfactory to the Town. Nothing in this section shall prevent the requirements of such bonds on construction contracts under $100,000 when the circumstances warrant.

Sec. 2-280. Construction contract performance and payment bonds

(a) Amounts: When a construction contract is awarded in excess of $100,000, bonds or security may be required and shall become binding on the parties upon the execution of the contract.

(b) Reduction of bond amounts: The Town Manager or designee is authorized to reduce the amount of performance and payment bonds when it is in the best interests of the Town to do so.

(c) Authority to require additional bonds: Nothing in this section shall be construed to limit the authority of the Town to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (a) of this section.

(d) Jurisdiction for litigation on bonds or disputes: Unless otherwise authorized by contract, every litigation instituted shall be brought in the Beaufort County Court of Common Pleas

Sec. 2-281. Architect, engineer, construction management, land surveying, auditing and other professional services

(a) Public announcement: When the contract purchase order amount is expected to be $25,000.00 or more, the Town shall publicly announce all requirements for architect-engineer, construction management, land surveying, auditing and other professional services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices.

Sec. 2-282. Construction Management Services, Design-Build Services, Turnkey Management Services

The Town Manager or designee shall have the discretion to use construction management services, design-build services, or turnkey management services as alternatives for construction contracting administration. In exercising such discretion, the Town Manager or designee shall consider the method which in the Town Manager's or designee's discretion is the most advantageous to the Town and will result in the timeliest, economical, and successful completion of the construction project. As a part of this determination, the Town Manager shall determine if the Town should prepare the request for proposals for providing such method of construction contracting administration or if the Town should retain outside consulting services to prepare such requests for proposals.

Sec. 2-283. Authority to debar or suspend

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Town Manager, after consulting with the Town attorney, is authorized to debar a person for cause from consideration for award of contracts. After consultation with the Town Manager, the Procurement Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period determined by the Town Manager. The causes for debarment include the following:

(a) 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;

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense involving moral turpitude;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Violation of contract provisions, as follows, of a character which is regarded by the Town Manager or designee to be so serious as to justify debarment action:

(1) Deliberate failure without good cause to perform in accordance with the specification or within the time limit provided in the contract; or

(2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(e) Any other cause the Town Manager or designee determines to be so serious and compelling as to affect responsibility as a Town contractor, including debarment by another governmental entity for any cause listed in this ordinance.

Sec. 2-284. Finality of decision to debar or suspend

A decision to debar or suspend shall be final and conclusive. The debarred or suspended person within ten days after receipt of the decision may appeal to the Town Council. The decision of the Town Council is final and non-appealable.

Sec. 2-285. Ethics, Government Accountability and Rules of Conduct

The provisions of South Carolina Code Ann. §8-13-100 et seq., known as the Ethics Government Accountability and Campaign Reform Act, are incorporated herein by reference and are applicable to all Town procurement. Article 7, Rules of Conduct Act are extracted into this Ordinance for ease of reference and compliance. (Note: Rules of Conduct applies to all matters involving Town employees and Council members.)

Sec. 2-286. Prohibition Against Contingent Fees

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a Town contract for a commission, percentage, brokerage, or contingent fee.

Sec. 2-287. Sanctions

In addition to all other civil and administrative remedies which are provided by law, the following sanctions may be imposed:

(a) Employees: The Town Manager may impose any one or more of the following sanctions on a Town employee for violations of the ethical standards in this Article or in the South Carolina State Ethics Act:

(1) Oral or written warnings or reprimands;

(2) Suspensions with or without pay for a specified period of time; or

(3) Termination of employment

(b) Nonemployees: The Town Manager may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

(1) Written warnings or reprimands;

(2) Termination of contract(s); or

(3) Debarment or suspension.

(c) Recovery of value transferred or received in breach of ethical standards: The value transferred or received in breach of the ethical standards may be recovered as follows:

(1) Recovery from both employee and nonemployee: The value of anything transferred or received in breach of this ordinance by a Town employee or a nonemployee may be recovered from both the Town employee and the nonemployee, joint and severally.

(2) Recovery of kickbacks: Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontractor or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Town and will be recoverable from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Sec. 2-288. Local Preference

The Town of Bluffton encourages participation of local suppliers in its overall procurement process. To support local entities, the Town offers a local preference certification program under the direction and administration of the Town Manager. The program details are included in the Procurement and Contract Manual.

Sec. 2-289. Protest

(1) Right to Protest: Exclusive Remedy

a) A prospective Offeror who claims to be aggrieved in connection with the solicitation of a proposal, bid or contract shall protest to the Town Manager within fifteen days of the date of issuance of the solicitation documents, or any amendment to it, if the amendment is at issue.

b) Any actual Offeror who claims to be aggrieved in connection with the intended award or award of a contract shall protest in writing to the Town Manager within ten days of the date award or notification of intent to award, whichever is earlier; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a

contract.

c) The rights and remedies granted in this article to offerors are to the exclusion of all other rights and remedies of Offeror against the Town.

d) The protest rights and remedies granted are not available for contracts with an actual or potential value less than fifty thousand dollars.

e) The written protest shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(2) Protest Review & Notice

a) The Town Manager or designee may attempt to settle by mutual agreement the written protest. The Town Manager has the authority to approve any settlement reached by mutual agreement.

b) If the Town Manager deems, after reasonable attempt, a protest cannot be settled by mutual agreement, an administrative review shall be performed consistent with the Town's Contract and Procurement Manual Procedures..

c) The Administrative Review Team shall include the Town's ATM Finance and Town Attorney.

d) A copy of the decision must be mailed or otherwise furnished immediately to the protestant and to all parties participating in the administrative review. The administrative review decision is final and conclusive.

Sec. 2-290. Assistance to Minority and Disadvantaged Business

a) The Town of Bluffton wishes to insure that small and minority owned business enterprises be offered a fair opportunity to fully participate in the overall procurement process of the Town.

b) The Town Manager shall ensure the Town staff:

(1) Provides assistance to minority businesses with the procurement processes.

(2) Cooperates and works with other private, municipal and state agencies such as the Small Business Administration, the Office of Minority Business Enterprise of the US Department of Commerce, Governor's Office of Small and Minority Business Assistance, etc. in maintaining special source lists of minority business firms detailing the products and services they provide.

(3) Facilitates business assistance training seminars and outreach programs

c) The Town Manager or his designee shall insure sourcing on grant funded projects are in full compliance with appropriate state, federal and other regulations specifically related to minority and small business engagement. The Town's Procurement and Contract Manual details procedures and practices specially developed to support this sourcing effort.

Sec. 2-291. Promulgation of supply management regulations.

The Town Manager may promulgate regulations governing:

(1) The management of supplies during their entire life cycle;

(2) The sale, lease, or disposal of surplus supplies by public auction, by regulation, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies; and

(3) Transfer of excess supplies.