

**PROCUREMENT AND PURCHASING POLICY
FOR THE CITY OF LIBERTY, SOUTH CAROLINA**

The purpose of this Policy is to establish appropriately competitive procurement procedures for the City of Liberty.

1. Applicability

This Policy applies to all buying, purchasing, renting, leasing from a third party, or otherwise acquiring any goods, supplies, services, equipment, or construction, unless otherwise noted herein.

The competitively bidding procedures do not apply to the procurement of goods or services or repairs under **\$2500**, either of which may be procured by way of a purchase order, as long as the purchase or repair does not exceed the amount budgeted by Council for such goods or services. Such purchases must be made and documented as set forth below in Section 3.

This Policy does not apply to purchases and sales of real estate, all of which must be approved by Council.

The requirements of this Policy may be amended, waived, or made more restrictive as required by the City, applicable law, regulation, or grant funding terms or conditions.

2. City Procurement Ethics Rules

No employee or official of the City, nor any family member of or person/entity with a close association with a City employee or official, may directly or indirectly solicit, accept, or receive any gift under any circumstances in which it could be inferred that the gift was intended to or could reasonably influence a procurement decision. The term "gift" includes anything of value, but is not limited to, meals, tangible items, entertainment, and third-party payment for events or experiences.

The offer of a gift to a employee or official by any vendor or contractor, or prospective vendor or contractor, may be reason for declaring such individual or firm to be an irresponsible bidder and debaring such individual or firm from participation in the City's procurement process for a period to be determined by Council.

No City employee or official may disclose otherwise confidential information to a potential vendor or potential provider of goods or services that might provide a competitive advantage to that potential vendor or provider.

All offers of gifts and any other attempt to bribe or improperly influence a procurement decision must be reported to the Mayor, the City Administrator, or the Deputy Administrator immediately.

Purchasing personal items not related to and required for the work of the City is prohibited.

3. Procedure for Procurement of Budgeted Goods and Services Less Than \$2500

Although not subject to the formal competitive bidding and request for proposal procedures herein, purchases of goods or services under \$2500 must be budgeted by Council and supported by at least 3 documented quotes or a statement indicating the reason why 3 quotes were not available.

Splitting of purchases in order to avoid having to go through applicable competitive selection processes is not permitted.

Purchases must be documented with a purchase order and receipt for the payment and provided to the City Finance Department within 5 business days after the purchase is made. Persons who are authorized to make and/or approve such purchases are the Mayor, City Administrator, the Deputy Administrator, and Department Heads.

A copy of the required purchase order form is attached hereto.

4. Procedure for Procurement of Goods and Services Equal to or Exceeding \$2500

Council shall consider and either approve or deny the procurement of goods or services the cost of which exceeds \$2500. Prior to Council consideration, the following measures must be taken.

Except as provided elsewhere in this Policy, procurement of goods and services equal to or exceeding \$2500 is to be determined by one of the following three methods:

(i) Invitation for Bids

The Mayor, the City Administrator, or the Deputy Administrator shall manage the bidding process. At a minimum, the following procedures are to be implemented. Additional requirements may be added as needed for particular or specialized procurement situations.

Notice of Invitation for Bids. The Invitation for Bids shall include or reference the goods and/or services sought, together with summary contractual terms and conditions applicable to the Procurement. The Invitation for Bids shall be publicly announced. The Director shall determine in his or her discretion the appropriate method by which an Invitation for Bids is publicly announced.

Receipt and Opening of Bids. All bids received prior to the bid opening shall be kept secure and unopened. 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 Mayor, the City Administrator, or the Deputy Administrator or their designee shall record the name of each bidder, the amount of each bid, and such other relevant information as

deemed appropriate. The final bid tabulation shall be made available upon request to all bidders after contract award.

Bid Evaluation and Acceptance. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids and any addenda thereto. No criteria may be used in bid evaluation that is not set forth in such Invitation for Bids or addenda. Subject to the right to reject all bids, the selected bid shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this Policy or by the Mayor in writing. Prior to accepting or rejecting the lowest bid, the City shall have the authority to negotiate with the low bidder for modifications of the bid and the proposed contract.

Correction or Withdrawal of Bids; Cancellation of Awards. In the sole discretion of the employee or official managing the bidding process, 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.

Award. If an award is to be made, the contract shall be awarded by written notice or purchase order to the lowest Responsible/Responsive Bidder after approval by Council. A "Responsible/Responsive Bidder" means a person or entity who: (1) demonstrates the capability in all respects to perform fully the contract requirements; (2) possesses integrity and reliability that, as substantiated by past performance and reputation, will assure good faith and quality performance; and, (3) submits a bid or proposal that conforms in all material aspects to the Invitation for Bids. When considering responsibility and responsiveness, the following may be considered:

- The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- Whether the bidder can perform the contract or provide the services promptly or within the time specified, without delay or interference;
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- The quality of performance of previous contracts or services by the bidder;
- The previous and existing compliance by the bidder with the laws and ordinances relating to the contract or services;
- The sufficiency of the financial resources and ability of the bidder to perform the contract or to provide the service;
- The quality, availability, and adaptability of the supplies or contractual services to the particular use required; and
- The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

Right of Rejection and Re-solicitation. The City official managing the bidding has the right, prior to award of the contract, to reject any and all bids for cause, or without cause, as he or she deems appropriate. The City 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.

Bond and Security.

(a) Bid security may be required for all construction contracts entered into pursuant to an Invitation for Bids. If required, bid security shall be one or more bonds provided by one or more surety companies meeting the criteria established by the Director. If required, 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 that does not comply with the bid security requirements shall be rejected.

(b) When a construction contract or other contract to improve real property is awarded and the value of such contract exceeds \$50,000, the Municipality shall require the contractor to provide a performance bond and a labor and material payment bond in the full amount of the contract. The bond must be secured by cash or must be issued by a surety company that is acceptable to the Municipality.

(c) Nothing in subparagraph 2 above shall be construed to limit the authority of the Municipality to require a performance bond or other security in addition to the bonds specified above.

(d) Bonding requirements may be temporarily waived for any emergency procurement.

Repeat Orders. The purchase of additional goods or services pursuant to a Procurement for up to one year following the award, provided that the per unit price of such goods or services may not exceed the per unit price specified in the original award, and provided that the amount procured may not exceed the amount budgeted by Council, unless Council has approved such additional purchase.

Multi-Year Contracts. To the extent permitted by law, a contract for supplies or services may be entered into for a period of time not to exceed a total of 5 years, *provided* that (a) the terms of the contract and the conditions of renewal or extension (if any) are included in the solicitation; (b) pricing increases for succeeding fiscal periods (if any) shall not exceed ten percent (10%) of the preceding year's contract price; and, (c) the proposed contract is reviewed by the City Attorney and approved by Council.

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 file a written protest with the Mayor, setting forth the grievance and any supporting grounds. Such protest must be received by the Mayor within ten calendar days after the grievant knows or should have known of the facts giving rise thereto, but in no circumstance more than fifteen calendar days after notification of award of the contract.

Authority to Resolve Protests. The Mayor shall have the authority to settle and resolve any protest. If the protest is not resolved by mutual agreement within 5 calendar days of the notice of protest, the parties shall submit the dispute to non-binding mediation, which shall be concluded within 10 calendar days of the notice of protest.

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. Such decision 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.

(ii) Requests for Proposals (RFPs)

Selection Committee (“Committee”). The Mayor, the City Administrator, or the Deputy Administrator will establish a selection committee of at least two members, which may include him/herself and the relevant department head.

Notice of Request for Proposals. Each RFP shall include or reference a description of the goods or services needed, all required services needed for the project, the submission deadline, and the proposal evaluation criteria to be used. Each RFP shall be publicly announced/published. The Committee shall determine the method and location for such advertisement, with the goal of obtaining enough RFPs to provide quality, cost effective choice for the City.

Receipt and Safeguarding of Proposals. All proposals received prior to the proposal opening shall be kept secure and unopened.

Evaluation Factors. The Request for Proposals shall state the relative importance of each evaluation criterion, but need not require numerical weighting. No factors or criteria that are not included in the Request for Proposals may be used in evaluation, provided that the Request for Proposals may contain provisions allowing minor amendments to the evaluation criteria prior to award. The published evaluation factors must be the selection basis. The Committee shall document the basis on which the award is made and shall make a determination of responsibility. The written documentation and determination may be included in the purchase order.

Negotiation. The Committee must review all submissions, and may interview those responding persons deemed by the Committee to be most qualified. Following such review, the Committee shall determine the most qualified proposer, and may negotiate a contract with such proposer. In the event a satisfactory contract cannot be negotiated with the most qualified proposer, the Committee may negotiate a contract with the next most qualified proposer, and so on, until a satisfactory contract can be negotiated. Nothing contained herein requires the Committee to negotiate a contract with an unqualified proposer or with a proposer who submits an unresponsive proposal.

Right to Withdraw and Re-solicit. Until an award is made, the City has the right to determine not to award the contract to any proposer or to determine to re-solicit proposals based upon modified and/or additional terms and conditions.

(iii) Sole Source Procurement

Goods or services may be obtained without competition if the Mayor, the City Administrator, or the Deputy Administrator documents in writing on the purchase order that there is only one legitimate source for the required goods or services or if a decision has been made to standardize with the product provided. An example of standardization might include, but not be limited to, the situation where the compatibility of equipment, accessories, services, systems or replacement parts is of paramount importance.

5. City Credit Card Use.

For purchases requiring the use of a City credit card, the Town Clerk shall document and control all use of Town credit cards, as well as all purchases made via use of such cards. The required documentation must identify the specific fund, account number, and/or line item from the current budget for the purchase in question.

6. Emergency Procurement

If there is an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions, the Mayor, the City Administrator, or the Deputy Administrator may authorize emergency procurements, *provided* that such emergency procurements shall be made as competitively as is reasonably practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor is to be made and provided to Council as soon as practicable, but in no event later than the next scheduled Council meeting.

7. Intergovernmental Agreements and Joint/Collective Procurement

Subject to the requirements of this Policy and to applicable law, the City 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 in accordance with an agreement entered into between the participants. A "Public Procurement Unit" is any county, city, town, or any other political subdivision of the State of South Carolina; any public agency or authority within the State; any other entity in the State that expends public funds for procurement of property, supplies, services, or construction; and, the Municipal Association of South Carolina. Such cooperative procurement may include, but is not limited to, joint or multiparty contracts between Public Procurement Units.

The City may also procure goods or services pursuant to an existing contract held by another Public Procurement Unit, upon a determination that such contract was awarded pursuant to appropriately competitive procedures. Without limiting the generality of the foregoing, it is hereby declared that contracts held by the State of South Carolina for the

purchase of goods or supplies were awarded pursuant to appropriately competitive procedures.

8. Exemptions from this Policy

The following goods and services shall be exempt from the provisions of this Policy, as long as budgeted for and/or approved by Council:

- (i) Published books, maps, periodicals, and technical pamphlets;
- (ii) Copyrighted educational films, filmstrips, slides, and transparencies;
- (iii) Postage stamps, postage fees, and telephone service;
- (iv) Professional dues, membership fees, and seminar registration fees;
- (v) Utilities including gas, electric, water, and sewer;
- (vi) Advertisements in professional publications or newspapers;
- (vii) Food and beverage items;
- (viii) Credit/bank card services; and,
- (ix) Professional Services, including but not limited to, accounting services; advertising and marketing services; legal services; design services, including but not limited to architectural, engineering, and landscape design services; medical services; safety training materials and services; public relations services; and, underwriting and financial services.

The listed exemptions shall include out-of-pocket expenses and other charges billed by any of the foregoing service providers where such expenses and charges are of the type usually billed to the client by such type of service provider.

Professional services are to be obtained on the basis of written contractual proposals and/or provisions of professional qualification information, with selection based on qualifications and fairness of pricing, along with any other additional factors deemed appropriate for the nature of the services to be provided.

When obtaining new professional services anticipated to cost in excess of \$20,000, competitive proposals and/or qualifications must be sought by posting a solicitation on the State Fiscal Accountability Authority's South Carolina Business Opportunities Online Edition (SCBO) or any State-sponsored successor to SCBO for at least ten business days, excluding weekends and State holidays, unless subject to the emergency purchases subsection herein. Solicitations for competitive proposals/requests for qualifications may be posted for longer periods of time, and may be posted and/or advertised in other suitable venues.

Professional services required on a regular basis and/or ongoing basis (e.g., City Auditor, City Attorney, City Engineers, City Bond Counsel, etc.) need not be posted or advertised again once qualifications are obtained and a competitive selection process

has been conducted and completed, until such time as a position needs to be filled or additional professional services are required.

9. Bonds and Securities for Procurement

Bid security may be required for all construction contracts entered into pursuant to an Invitation for Bids. If required, bid security shall be one or more bonds provided by one or more surety companies meeting the criteria established by the City. If required, 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 that does not comply with the bid security requirements shall be rejected.

When a construction contract or other contract to improve real property is awarded and the value of such contract exceeds \$50,000, the City shall require the contractor to provide a performance bond and a labor and material payment bond in the full amount of the contract. The bond must be secured by cash or must be issued by a surety company that is acceptable to the City.

In all instances, the City may require a performance bond or other security in addition to the bonds specified above.

Bonding requirements may be temporarily waived for any emergency procurement.

10. Design-Build

The Mayor, the City Administrator, or the Deputy Administrator may determine that a particular procedure is warranted to award a contract for Design-Build Services. Before the City enters into entering an arrangement for Design-Build Services, the Council must approve the use of such Design-Build Services and the procedure to be used, and should state in open session the reasons for using such method of Procurement.

11. Local Preference

For procurement in amounts equal to or exceeding \$2500, the City may allow the lowest local bidder (defined as a bidder maintaining a place of business physically located and operating within the municipal limits of the City, whose bid is within five percent of the lowest non-local bidder, to match the bid submitted by the non-local bidder and thereby be awarded the contract, if:

- a. The total purchase price is \$2500 or more;
- b. The local bidder has a valid business license issued by the City, which business license was issued at least twelve months prior to bid opening date; and,

- c. For a period of twelve months or more the local bidder has maintained a physical business address (not including a Post Office Box) located within the limits of the City;

provided, however, that if the procurement is to be made pursuant to state or federal guidelines that prohibit or restrict local preference, then there shall be no local preference.

In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, the contract shall be awarded to the local bidder. If two or more of such bids are submitted by local bidders, the Director 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 Director shall award the contract to one of the outside tie bidders by drawing lots in public.

12. Severability

- a. Should any provision or application of this Policy be held invalid, such invalidity shall not affect other provisions or applications of the Policy that can be given effect without the invalid provisions or application. To this end the provisions of this Policy are declared to be severable.

EQUAL OPPORTUNITY

When seeking goods and services for City procurement, the City welcomes and encourages the submission of bids and proposals from all qualified persons and entities without regard to race, color, sex, gender, age, religion or religious creed, national origin, ancestry, citizenship, cultural identity, marital status, sexual orientation, gender identity, gender expression, genetic information, disability, military or veteran status, or any other characteristic protected by law. Federal and/or state laws may require that procurement preferences be given to persons/entities on the basis of membership in certain protected categories and may also restrict geographical sources of certain services and materials; thus, the City will take steps to comply with any such requirements of law as may be applicable.

