

TOWN OF MOUNT PLEASANT PROCUREMENT REGULATIONS GUIDE

Effective February 13, 2018 – Updated January 15, 2021



Mount Pleasant
SOUTH CAROLINA

Document Change History

Published Date	Summary of Changes
April 25, 2019	<i>Section 4.1 Notice/Advertisement of Solicitations</i> - Page 11 was updated to correct a Scribner error regarding where to advertise. It was correct to change and to or to reflect the original Code.
October 2, 2019	<i>Section 3.2 Contracts or Agreements</i> – Page 9 was updated to correct an inconsistency in the language. Officials authorized to sign Contracts was changed to Town Administrator or authorized designee was added.
January 15, 2021	<i>Section 10.2 – Multi-term</i> – Page 26 was updated to add guidance regarding contract terms of 7 or more years.

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Section 1: What is Procurement

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

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

The Procurement Division procures goods and services for the Town of Mount Pleasant (Town) by performing the following tasks:

- Process and approve certain purchase requisitions
- Issue purchase orders and change orders
- Review specifications
- Advertise and issue solicitations
- Evaluate bids, proposals, and quotations
- Negotiate and draft contracts
- Maintain vendor contact lists
- Administer and closeout contracts
- Resolve vendor/contractor performance complaints and contract compliance issues
- Verify licenses and insurance coverage for contractors (as needed)
- Provide procurement training
- Ensure compliance with the Procurement Code (Chapter 38 of Town Ordinances) and audit procurement files
- Manage surplus and seized property and disposition

1.1 Procurement Authority

The Procurement Division derives its authority from Town Ordinance Chapter 38. Town Council passed and adopted Ordinance Chapter 38, to govern the activities of the Town's Procurement Division, under the direction of the Town Administrator and Chief Financial Officer. In general, the Ordinance established that the Procurement Division duties have been prescribed by the laws of the State of South Carolina and Town Council. Federal law is applicable to Town procurement activities anytime Federal funds are used for certain procurements.

1.2 Procurement Mission Statement

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

1.3 Procurement Objectives and Standards

The Procurement Division will conduct all transactions with the following values:

- Avoid unfair practices and give all qualified vendors an equal opportunity to do businesses with the Town.
- Refuse to accept any form of bribery and prevent any appearance of doing so.

- Receive counsel from colleagues and cooperate with them to promote a spirit of teamwork and unity.
- Behave with fairness and dignity, and demand honesty and truth throughout the procurement process.
- Strive for greater knowledge of procurement methods and the materials and services purchased.
- Purchase without prejudice, stimulate competition on all procurements, and seek to obtain the maximum value for each dollar spent of taxpayer monies.
- Maintain competitive bidding procedures as the primary, preferred, method of procurement.
- Develop material standards that afford a wide area of competitive bidding consistent with the required levels of quality.
- Maintain open, public records of firms solicited, and all prices quoted and paid for items obtained for Town use.
- Furnish clear indications of quality and service required in all bid solicitations.
- Cooperate with all organizations and individuals involved in activities designed to enhance the development of the procurement profession, remembering that our actions reflect on the entire profession.

1.4 Procurement Ethics

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

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

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

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

1.5 Procurement Organization Structure

The Procurement Division is a division of the Administrative Services Department for the Town. The Town Administrator, or designee, shall be responsible for administering the Procurement Code.

The Procurement Officer, or designee, shall provide for implementation and compliance with all the requirements of this policy to meet the objectives and standard set forth. The Procurement Division acts under the direction of the Town's Chief Financial Officer, the Town Administrator and the Bids and

Purchases Committee and organizes and executes all procurement activities for the Town. The Procurement Officer coordinates with department officials in establishing specifications for use in the procurement of all materials, supplies, equipment, construction, or services, including directing the bidding process of appropriate purchases, supervising the evaluation of bids, and participating in contract negotiations. They shall coordinate the awarding and executing of contracts and purchases within the confines of the procurement ordinance and ensure compliance with local, state, and federal guidelines. The Procurement Officer shall be responsible for developing competent staff and establishing and maintaining an effective professional working relationship between all procurement personnel and suppliers, department managers, contracts, and other governmental units and the public.

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

The Procurement Division office is located at the Town hall at 100 Ann Edwards Lane.

Office hours are Monday through Friday, 8 a.m. to 4:30 p.m.

Section 2: Town Policies Affecting Procurement

2.1 Solicitation Policies

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

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

2.2 Procurement Levels

\$1 to \$9,999 – Administrative Process “Delegated Authority”

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

\$10,000 to \$24,999 – Written Quotations

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

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

The department manager, the Procurement Officer, and the Chief Financial Officer, or designees, must approve before the purchase is made if between \$10,000 to \$24,999.

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

\$25,000 to \$99,999 – Informal Solicitations for Bids or Proposals

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

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

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

For normal competitive purchases, the department manager, the Procurement Officer, and the Chief Financial Officer, or designees shall approve before the purchase is made.

\$100,000 – Formal Bids or RFQ/RFPs

Competitive, sealed bidding is required; however, approval by the Bids and Purchases Committee for purchases over \$100,000 is required before the purchase is made.

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

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

2.3 Exceptions to Bidding

2.3A Sole Source

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

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

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

The department manager, or designee, may use “delegated authority” practices for purchases \$9,999 and under. From \$10,000 to \$24,999 the department manager, the Procurement Officer, and the Chief Financial Officer, or designees, must approve the written sole source justification before the purchase may be made. For purchases between \$25,000 to \$99,999, the department must coordinate with the Procurement Officer and the Chief Financial Officer, or designees, before obtaining approval by the Town Administrator, or designee.

2.3B Emergency Procurement

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

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

2.3C Purchasing Cooperatives

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

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

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

2.3D Critical Procurement

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

The Town Administrator, or designee, may make or authorize others to make, critical procurements when in nature, it is critical to the Town and time does not permit for solicitation or resolicitation and that the method provides that the Town’s best interest is served. In such cases, the department manager must coordinate the procurement with the Procurement Officer, and the Chief Financial Officer, or designees, before seeking written approval by the Town Administrator, or designee.

2.4 Invalid purchases

The Town may consider as void, any purchase or contract made on behalf of the Town which is contrary to the provisions of Town Ordinance Chapter 38 or this policy. The employee making such purchase

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

2.5 Insurance

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

2.6 Training

The Town's Procurement Division will provide, at least annually, a training session for all Town departments to familiarize themselves with the Town's policies, procedures and guidelines for the procurement process. In addition, Procurement staff will attend trainings throughout the year as the budget and staffing allow.

2.7 Retention and Disposition

The Public Records Act (Code of Laws of South Carolina 1976, as amended, Sections 30-1-10 through 30-1-170) sets forth requirements for the retention and disposition of Procurement Files. *The General Records Retention Schedules for Municipality Records* outlines the retention schedules for Municipalities. Section 12.601-611 details the retention and disposition schedule. Departments should coordinate records retention and disposition with the Chief Financial Officer.

Section 3: Methods of Procurement

3.1 Appropriated Monies

Except for emergencies or other authorized exceptions, no procurement or commitment of monies shall be made by any department, or employee of the Town unless monies have been appropriated and are available in the appropriate account. Monies can be transferred from other funds with the approval of the Chief Financial Officer, or designee, via a Budget Adjustment Form.

3.2 Contracts or Agreements

A contract, or an agreement, is a legally binding document that is used for most purchases over \$100,000. It authorizes the contractor to design, build, provide services or deliver materials or supplies in accordance with the terms and conditions specified thereon (or incorporated from a bid or other document by reference). It also acknowledges the obligation of the Town to pay for goods or services ordered, upon the receipt and proper invoice. The Bids and Purchases Committee and/or the Town Administrator, or authorized designee, may legally bind the Town in procurement documents. All negotiations, contracts and the like are not finalized until written signature of the Town Administrator or authorized designee. A contract is followed by the issuance of an internal purchase order so that the accounting system can automatically encumber, or set aside, the monies from the department's budget. This allows the department to more closely monitor their budget.

3.3 Purchase Orders

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

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

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

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

3.4 Change Orders

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

Section 4: Town Procedures for Solicitations

4.1 Notice/Advertisement of Solicitations

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

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

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

Adequate notice for the formal solicitations shall be given, no less than ten calendar days prior to the date set forth therein for the opening of the bids. Such notice shall include publication in a newspaper of general circulation within the appropriate classified section, or publication on the Town's website, or publication on the South Carolina Business Opportunities (SCBO) website.

Written responses will be acceptable as disclosed in the solicitation.

4.2 Specifications

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

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

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

Should it be determined, after all bids of \$100,000 or more have been received and reviewed, that a product or service with an alternate specification would prove to better serve the Town's needs and best interest; all such bids may be rejected at the discretion of the Committee.

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

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

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

4.3 Receipt, Safeguarding and Opening of Solicitations

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

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

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

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

4.4 Corrections or Withdrawals

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

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

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

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

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

4.5 Late Bids/Proposals

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

4.6 Acceptance and Evaluation

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

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

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

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

4.7 Negotiations

4.7A Informal Bids

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

4.7B Sealed Bids

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

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

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

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

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

4.7C Sealed Proposals

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

4.7D Multi-step Sealed Bidding/Proposals

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

4.8 Award

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

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

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

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

4.8A Tied Offerors

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

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

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

4.8B Award Delay

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

4.9 Policies for Offerors

4.9A Collusion or Anticompetitive Practices

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

4.9B Responsibility of Offerors

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

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

4.9C Approved Accounting Systems

The Town may require the selected offeror have:

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

4.9D Right to Audit Records

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

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

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

4.9E Resolution of Protested Solicitations and Awards

Any actual or prospective bidder, offerors, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest in accordance with Town Ordinance, Chapter 38.

Section 5: Construction Contracting

The method of construction contracting administration used for a Town construction project shall be determined to be that method which is most advantageous to the Town and will result in the most timely, acceptable quality, economical, and successful completion of the construction project. All Town construction contracts valued at \$100,000 or greater shall be procured based on the following as set forth in this section.

The Town Administrator, Chief Financial Officer, and Procurement Officer, or designees, shall make a determination regarding the appropriate method of construction administration for a particular construction project. Methods include, but not limited to design-bid-build, design-build, or construction manager at risk.

5.1 Design-Bid-Build Method of Construction Contracting

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

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

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

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

5.2 Design-Build Method of Construction

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

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

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

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

5.3 Construction Manager at Risk Method of Construction

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

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

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

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

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

5.4 Bid Security

The Town may, at its discretion, require bid security deposits as stated in the invitation for bids on any projects. Construction projects valued at \$100,000 and over will be required to hold bid securities. These deposits may take the form of a certified check, a cashier's check or bond executed by a surety company licensed under the laws of South Carolina to execute such bonds. The bid security shall be in an amount to at least 5% of the amount of the bid. When the invitation for bids requires security, noncompliance requires that the bid be rejected. Bid deposits will be returned to the unsuccessful bidders after an award

determination has been made. In the event the successful bidder shall fail to enter into a contract within the terms of the invitation after having been notified of the award, the bid security deposit shall, at the option of the Town, be forfeited to the Town and retained and deposited to the Town's account. In such an instance, the Town may renegotiate with the second lowest, responsive and responsible bidder, or resolicit new bids; whichever is determined in the best interest of the Town.

5.5 Performance Bonds

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

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

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

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

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

Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed

or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

5.6 Retention

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

Section 6: Professional Services

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

Announcements or solicitations for professional services within this section shall be advertised formally when the services are expected or anticipated to be \$100,000 or greater. Otherwise, informal solicitations are allowed. In either application, the solicitation shall include, but not limited to, the project title, the general scope of work, a description of all professional services required for the project, the submission deadline, how interested firms may apply for consideration and the evaluation criteria that shall be used for selection determination.

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

The Town's selection committee shall review and evaluate each response received using the selection criteria as reflected within the solicitation. The evaluation committee may select and hold interviews with firms or persons who have responded to the invitation and who are deemed most qualified on the basis of information available prior to the interviews. The purpose of the interviews shall be to provide such information as may be required by the committee to fully acquaint itself with the relative qualifications of the interested persons or firms.

The evaluation committee will evaluate each interview with the following guidelines in mind:

- past performance,
- the ability and availability of professional personnel,
- willingness to meet Town time and budget requirements,
- location as directly related to the complexity of the project, and especially so if the project is a joint effort being accomplished between Town staff and the person/firm,

- Recent, current and projected workloads of the firms,
- Related experience referenced from past or similar projects, and
- Any other criteria as deemed appropriate by the evaluation committee.

Based upon these evaluations, the committee shall recommend to the Bids and Purchases Committee, if \$100,000 or more, the offerors which, in its judgment, are the most qualified, ranking the offerors in priority order. The selection results may be made available to all persons or firms who responded when, upon acceptance and approval by the Bids and Purchases Committee.

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

Section 7: Information Technology Procurements

Procuring information technology requires the involvement of the Town's Information Technology (I.T.) division early in the procurement process. The Town's I.T. division is responsible for maintaining the Town network, servers, workstations, and peripherals as well as maintaining quality of IT equipment and resources at a reasonable cost. As such, all procurement related to I.T., regardless of the source of funding, must be made with cooperation of the I.T. manager, the Procurement Division, and the Chief Financial Officer, or designee. Exceptions would be the purchase of consumables, such as paper, toner, writable CD/DVDs, keyboards, cables, mouse replacements and the like.

Section 8: Local Vendor Partnership Procurement

Procurement of goods and non-professional services shall be solicited from local vendors who avail themselves to the terms and conditions of the vendor partnership program as described in this section.

Local preference shall be given to those vendors who enter into a partnership agreement with the Town. To be eligible to execute the partnership agreement, the vendor must have a principal place of business located within the corporate limits of the Town, and register in official documents filed with the Secretary of State, the Internal Revenue Service, or state Tax Commission. A post office box or temporary construction or office trailer shall not be considered a place of business to comply with the provisions of the policy. The local vendor must also have a current Town business license and be in compliance with other local ordinance requirements. A principal place of business must be either owned or rented real property used for business purposes.

Local vendors must also agree to and comply with the following provisions:

1. Sell the Town the best product or service for the best price available;
2. Respond to the Town's needs in a timely fashion;
3. Provide future maintenance and services for the products they sell; and
4. Must also agree to allow the Town to audit the vendor's records relating to the Town's purchases at any time the Town requests, in order to ensure the Town is receiving the best product or service for the best price.

Once the vendor has executed and has filed the partnership agreement with the Town, the Town and its designated representatives shall solicit bids or proposals for products or non-professional services which shall be evaluated on a percentage-reduction basis. In evaluating the price of eligible local vendor's bids or proposals, the bids or proposals shall be evaluated as though the prices proposed by local bidders were either 5%, 2% or 1% lower than actually proposed in accordance with the following schedule:

1. If the local bidder submits bids or proposals for products or non-professional services costing less than \$10,000, the business or individual shall be evaluated on a 5% reduction basis;
2. For products or services costing between \$10,000 and \$50,000, the evaluation shall be based on a 2% reduction basis;
3. For products or services costing \$50,000 or more, the evaluation shall be based on a 1% reduction basis, but will not exceed a total reduction of more than \$2,000.

In the event of a tie bid, ties between one local vendor and on or more non-local vendors meeting specifications, shall be broken in favor of the local vendor. Ties between two or more local vendors meeting specifications, will be broken through a coin toss method until the winner remains. However, the local preference stated herein shall not apply if all vendors, bidders, or proposers are local, eligible, partnership vendors.

For purposes of this section, non-professional services, are construction or renovation of facilities, janitorial services, general maintenance, including fleet management, landscaping, and lawn or tree services, vector services, printing services, travel services, food services, recreational services, training assistance, and temporary job placement services. Further decisions regarding the classification of items or services as professional or non-professional shall be determined by the Town Administrator, or designee.

Nothing herein shall be construed as increasing or decreasing the actual price of a bid or proposal and the resulting contract in accordance with their terms and conditions; this section is intended only to be used for purposes of comparing and evaluating bids and proposals for products and services. Nothing within this section shall be construed to create any private rights, claims, or cause of actions on behalf of any person, including but not limited to, bidders, proposers, and contractors.

Should it be determined that any portion of this section is in conflict with any federal and state laws, regulations, or provisions, then that portion of this section shall be invalid but should not affect the remaining portions of this section.

The requirements of this section may be waived by Town Council upon a formal finding that the best interest of the Town would not be served by adhering to the provisions as stated in this section.

This section shall not apply in emergency, sensitive, or critical procurement situations. The Town reserves the right to specify brand names based on its experience, current inventory, and other qualifications specified by the user department.

Section 9: Vendor Issues

Vendors sometimes call on Town departments and divisions. Although they may offer helpful information, they may also subject Town employees to high-pressure sales pitches. Town staff can direct

vendors to the Procurement Office. Procurement staff will gather information about their products and services and give them directions on how to register on the Town's vendor registration program.

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

Departments wishing to lodge a complaint about a vendor (for poor service, failure to meet specifications, etc.) should contact the Procurement Division. The Procurement Division staff will attempt to resolve the problem with the vendor and will add the complaint to the vendor's performance history file, as directed by the Procurement Officer. Documentation of vendor performance issues is extremely important. Without it, the Procurement Official will not be able to disqualify vendors.

9.1 Resolution of Contract Controversies

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

The Town Administrator, or authorized designee, is authorized to settle and resolve controversies, as described in this section whereby the contract amount or the amount of the controversy shall not exceed 5% of the total project cost, or an aggregate of up to \$99,999.99, whichever is greater. Any contract controversy above this amount shall be referred to the Bids and Purchases Committee.

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

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

9.2 Violations of Law

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

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

- d. Reject all offerors in their entirety.

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

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

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

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

9.3 Authority to Debar or Suspend

The suspension and debarment process protects the Town from fraud, waste, and abuse by using tools to avoid doing business with non-responsible contractors and vendors. This section applies to a debarment for cause from consideration for award of contracts, goods, or services, or a suspension from such consideration during an investigation where there is probable cause for such debarment. Additionally, if Federal or State monies are being utilized for the procurement, the Procurement Division will ensure that potential vendors are not listed on the Federal debarment and suspension list before awarding contracts.

The Town Administrator, after reasonable notice of debarment to the person or firm involved and reasonable opportunity for that person or firm to be heard, and having consulted with the Bids and Purchases Committee and Town Corporate Counsel, shall have the authority to

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

The causes for debarment or suspension include:

- Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town contractor, vendor, or supplier.
- Conviction under state or federal antitrust statutes arising out of the submission of bids, quotes, offers, contracts, or proposals;

- Violation of contract, bid, proposal or quotation provisions, as set forth below, of a character which is regarded by the Town Administrator to be so serious as to justify debarment action. This would include, deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract, bid, proposal, offer, or quotation; or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, proposals, offers, bids or quotations;
- Any other causes the Town Administrator determines to be so serious and compelling as to affect responsibility as a Town contractor, supplier or vendor, including debarment by another governmental entity for cause;
- For violation of the ethical standards set forth in the South Carolina State Ethics Act.

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

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

Section 10: Types of Contracts

10.1 Term

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

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

10.2 Multi-Term

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

1. Multiterm contracts for supplies and services may be entered into for specified periods of time, not to exceed five years, provided the terms of the contract and the conditions for renewal or extension, if any, are included and so specified in the invitation, and that funds are provided and available for the initial term. On a case-by-case basis, Contract terms of up to seven (7) years may be approved by the Procurement Officer. Proposed Contracts exceeding seven (7) years must be approved by the Bids and Purchase Committee. For competitive procurements, approval of Contracts exceeding seven (7) must be granted prior to solicitation issuance.

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

10.3 Contract Clauses

All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. At the direction of the Bids and Purchases Committee, the Town Administrator, or authorized designee, may issue clauses appropriate for supply, service, or construction contracts addressing at least the following subjects:

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

- Affirmative action.

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

10.4 Price Adjustments

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

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

Section 11: Management and Disposal of Town Property Other than Real Property

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

11.1 Salvageable Personal Property

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

11.2 Non-Salvageable Personal Property

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

designee, may authorize such transfers of personal property whose value is determined to be \$10,000 or less.

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

11.3 Seized Assets and Unclaimed Properties

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

1. The Town shall place the property within the regular operating inventory of the Town for use by the Town, subject to approval by the Chief of Police.
2. Disposal of this property shall be performed in the same manner as previously designated elsewhere herein.
3. The property or proceeds received from the disposal of this property shall be donated to a recognized nonprofit organization in an effort to promote community relations and goodwill. Proceeds, inventories and other properties, if not donated, shall be deposited into the Town's Seized Asset Fund.
4. Bicycles may be disposed of pursuant to this section of section 73.06 of the Town Code of Ordinances. The decision for disposition in this regard shall be made by the Chief of Police.