

STATE OF SOUTH CAROLINA ) AN ORDINANCE TO AMEND  
) CHAPTER 2, "ADMINISTRATION"  
) ARTICLE VI, "PROCUREMENT"  
) OF THE HARDEEVILLE  
) CODE OF ORDINANCES, FOR  
COUNTY OF JASPER ) THE PURPOSE OF UPDATING THE  
CITY OF HARDEEVILLE ) TERMINOLOGY AND AMENDING  
) CURRENT PURCHASING PRACTICES  
)  
ORDINANCE NO 2022-7-21A )

**WHEREAS**, the above referenced Chapter 2 of the Hardeeville Code of Ordinances contains certain provisions concerning procurement allowances, exceptions and prohibitions; and,

**WHEREAS**, the City of Hardeeville has authority to enact resolutions, ordinances, regulations and procedures pursuant to Section 5-7-30 of the South Carolina Code of Laws, 1976, as amended; and,

**WHEREAS**, the Hardeeville City Council seeks to update the procurement ordinance to ensure that due diligence is applied to the utilization of general fund and special fund resources; and,

**WHEREAS**, this amendment to the procurement ordinance applies current best practices and adheres to recommendations of Generally Accepted Accounting Practices; and,

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Hardeeville in Council duly assembled as follows:

Section 1. Article VI -Procurement, is amended by substituting the revised attached Exhibit A.

Section 2. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of inconsistency.

Section 3. This ordinance shall be effective on final reading.

SO ORDAINED this \_\_\_ day of \_\_\_\_\_, 2022, by the Hardeeville City Council being duly and lawfully assembled.

\_\_\_\_\_  
Harry Williams, Mayor

ATTEST:

\_\_\_\_\_  
Lori Pomarico, City Clerk

First Reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Second Reading: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Prina C. Maines, City Attorney

## EXHIBIT A

### CHAPTER 2. ARTICLE VI. - PROCUREMENT

#### Sec. 2-171. - Definitions.

*Design-build services* means methods of construction contract management that allow for the selection of a single firm to perform and/or manage the complete design and construction of a project.

*Purchasing director* means the City Manager or his/her designee.

*Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services, equipment or construction.

*Public procurement unit* means any county, city, town, and any other subdivisions of the state or public agency of any such subdivision, public authority, educational, health, or other institution, and any other entity which expends public funds for procurement of property, supplies, services, or construction.

*Responsible/responsive bidder* means a person or entity who (1) has the capability in all respects to perform fully the contract requirements, and has the integrity and reliability which, as substantiated by past performance and reputation, will assure good faith quality performance, and (2) has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals.

#### Sec. 2-172. - Purchasing director, specified duties.

The city manager, or an officer of the city designated by the city manager, shall be the purchasing director for the city. In accordance with the following provisions of this article, he/she shall be responsible for:

- (a) The purchase of supplies, materials and equipment and contractual services required by any office, department or agency of the city government.
  - (b) The storage and distribution of all supplies, materials and equipment required by any office, department or agency of the city government.
  - (c) Establishing written specifications, whenever practicable, for supplies, materials, supplies and equipment required by any office, department or agency of the city government.
  - (d) Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in storerooms or warehouses.
  - (e) Soliciting and maintaining an up-to-date list of qualified suppliers who have requested their names to be added to a "bidders list". The purchasing director shall have authority to remove the names of vendors who do not have a business license to do business in the city, have defaulted on their quotations, attempted to defraud the city or who have failed to meet established specifications or delivery dates. Vendors removed for failing to have a business license may be reinstated by submitting proper documentation to the purchasing director; those who have defaulted, attempted to defraud the city or failed to meet specifications and delivery dates must apply for reinstatement to the city council.
  - (f) Obtaining as full and open competition as possible on all purchases, contracts and sales.
  - (g) Disposing of all surplus or absolute vehicles, equipment or property.
- (Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-173. - Procedure.

All supplies and contractual services, except as otherwise provided herein, shall be purchased in accordance with the provisions of this article. All sales of personal property which has become obsolete or unusable, when the estimated value shall exceed five thousand dollars (\$5,000), shall be sold by formal written contract or at a public auction, or other method as determined by the City Manager, to the highest responsible bidder, after due notice inviting proposals and bidders.

(Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-174.1. - Source selection and contract formation.

(a) Methods of source selection. Except where noted herein, all city contracts shall be awarded by one of the following methods:

- (1) Invitation for bids (paragraph (b));
- (2) Request for proposals or qualifications (paragraph (c));
- (3) Emergency procurement (paragraph (d));
- (4) Small Purchases (paragraph (e)).
- (5) Sole source procurement (paragraph (o)).

(b) Invitation for bids.

(1) Notice of invitation for bids. An invitation for bids shall include (or state where such information is to be made available) a project description, and all contractual terms and conditions applicable to the procurement. The invitation for bids shall be widely circulated and publicly announced.

(2) Receipt and opening of bids. All bids (whether or not sealed) received prior to the bid opening shall be kept secure and unopened. Bids may be opened publicly or privately, as determined by the purchasing director, in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be deemed appropriate by the purchasing director, together with the name of each bidder, shall be tabulated by the purchasing director. The ranking of each bidder, which need not include the dollar amounts of the bids, shall be made available to all bidders after contract award.

(3) Bid acceptance and bid evaluation. Subject to the city's right not to accept any bid, the selected bid shall be accepted unconditionally without alteration or correction, except as otherwise authorized in these procedures or by the purchasing director. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids or addenda to such bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids and addenda.

(4) Correction or withdrawal of bids, cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted within the purchasing director's discretion. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted.

(5) Award. If an award is to be made, the contract shall be awarded by written notice to the lowest responsible/responsive bidder. In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, the contract shall be awarded to the local bidder. If two (2) or more of such bids are submitted by local bidders, the purchasing 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 purchasing director shall award the contract to one of the outside tie bidders by drawing lots in public.

(6) Right of rejection and resolicitation. The purchasing director has the right, prior to award of the contract, to reject any and all bids for cause, or without cause, as it deems appropriate. The City has the right to determine not to award the contract to any bidder or to determine to resolicit bids based upon modified terms and conditions.

(c) Request for proposals or qualifications.

(1) Selection committee. For each project in which the request for proposal procurement selection method is used, the City Manager will establish a selection committee (the "committee"). The purchasing director may be a member of that committee.

(2) Notice of request for proposals or qualifications. The request for proposals or qualifications shall be publicly announced and shall include a description of the project, enumerating all required professional services for the project (or state where such information is to be made available).

(3) Receipt and safeguarding of proposals or qualifications. All proposals or qualifications whether or not sealed) received prior to the proposal opening shall be kept secure and unopened.

(4) Evaluation factors. The request for proposals or qualifications shall state the relative importance of each evaluation factor but need not require numerical weightings for each factor. No other factors or criteria shall be used in evaluation and there shall be adherence to any weightings (if such are used) for each factor in the request for proposals. The contract file shall contain the basis on which the award is made. A determination of responsibility shall be made before award.

(5) Negotiation. A committee may review all submissions, hold interviews with those responding companies who are deemed by the committee to be most qualified, determine the most qualified proposer, and negotiate a contract with the most qualified proposer. In the event a satisfactory contract cannot be negotiated with the most qualified proposer, the committee may negotiate a contract with the next most qualified proposer, and so on, until a satisfactory contract can be negotiated. Nothing contained herein will require the committee to negotiate a contract with an unqualified proposer or with a proposer who submits an unresponsive proposal.

(6) Right to withdraw and resolicit. The purchasing director has the right to determine not to award the contract to any proposer or to determine to resolicit proposals based upon modified terms and conditions.

(d) Emergency procurement. Notwithstanding any other provision of these procedures, the purchasing director may make or authorize others to make emergency procurements when there exists an immediate threat to public health, welfare, time critical economy and efficiency, or safety under emergency conditions and provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. However, such written determination shall not be deemed to be a condition precedent to an award under this section.

(e) Small purchases. Any procurement not exceeding one hundred thousand dollars (\$100,000) may be made by the city manager (or by the purchasing director as authorized by the city manager) by the solicitations of written quotations from a minimum of three qualified sources (or, if in the city manager's judgment, there are fewer than three (3) qualified quotations, from all qualified sources), and the award shall be made to the most responsible/responsive bidder.

(f) Design-build services. The purchasing director may use design-build services as an alternative method for construction contracting administration. Except where provided by these procedures, request for proposals must be used for the procurement of design-build services.

(g) Prequalification of bidders.

(1) The purchasing director may prequalify all prospective bidders or proposers.

(2) Notice of prequalification shall be publicly announced and shall set forth the criteria (or state where such criteria are to be made available) by which the qualifications and appropriateness of prospective bidders shall be determined. Only those criteria set forth in the prequalification notice may be considered in prequalifying bidders. The purchasing director shall make all prequalification decisions in the exercise of his reasonable discretion and shall make a written record of the bases for its prequalification determinations. Prior to issuance of the invitation for bids or request for proposals or qualifications, all prospective bidders or proposers that were provided with prequalification notice will be notified of the purchasing director's decisions relating to prequalification.

(h) Bond and security.

(1) Bid security shall be required for all competitive sealed bidding for construction contracts entered into pursuant to article II (B). Bid security shall be one (1) or more bonds provided by one (1) or more surety companies meeting the criteria established by the purchasing director. Bid security shall be in an amount equal to at least five (5) percent of the bid unless a higher percentage is specified in the invitation for bids. Any bid which does not comply with the bid security requirements shall be rejected.

(2) When a construction contract or other contract to improve real property is awarded and such contract exceeds one hundred thousand dollars (\$100,000), 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 licensed in the State of South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability". If the contract is for less than one hundred thousand dollars (\$100,000), the city may in its discretion permit the use of a "Bae" rated bond if it justifies that use in writing.

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

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

(i) Bidders in default to city. The purchasing director shall not accept the bid of a vendor or contractor who is delinquent in the payment of taxes, license, or other moneys due the city, or has been removed from the bidders list and not reinstated as set forth in Sub-Section 2-171(e) above.

(j) Award of contract/purchase.

(1) Authority in the agent. No purchase or contract shall be awarded without prior approval of the purchasing director, subject to limits contained herein. Department heads shall have the authority to make purchases up to three thousand dollars (\$3,000) with up to three (3) verbal quotes.

Department Heads shall have the authority to make purchases up to ten thousand dollars (\$10,000) with at least three (3) written quotes and the purchasing director's approval. The City Manager shall have the authority to award contracts/purchases up to one hundred thousand dollars (\$100,000). All contracts/purchases (excluding professional services) over one hundred thousand dollars (\$100,000) (or non-budgeted items) shall require the approval of city council. *NOTE: If funds have been appropriated in the budget the City Manager has the authority to approve amounts in excess of the \$100,000 threshold.* Progressive billing shall include at least a 5% retainage. *\*The City has a Finance Policy which includes permissible usage of credit cards, fuel cards and etc.*

### Procurement Matrix

| <i>Applies to Procurement methods to include Credit Card*, Check, EFT and etc.</i> | Verbal Quotes; up to three (3) | Written Quotes; at least three (3) | City Manager Approval | City Council Approval | RFB, RFQ or RFP | Performance and/or Payment Bond |
|--|--------------------------------|------------------------------------|-----------------------|-----------------------|-----------------|---------------------------------|
|  | Required                       | Required                           | Required              | Required              | Required        | Required                        |
| \$0 to \$3,000   | Yes                            | N/A                                | N/A                   | N/A                   | N/A             | N/A                             |
| \$3,001 to \$10,000  | N/A                            | Yes                                | N/A                   | N/A                   | N/A             | N/A                             |
| \$10,000 to \$100,000  | N/A                            | Yes                                | Yes                   | N/A                   | N/A             | N/A                             |
| \$100,000 or Greater   | N/A                            | Yes                                | Yes                   | Yes                   | Yes             | Per City Manager discretion     |
| Professional Services \$100,000 or Greater   | N/A                            | Yes                                | Yes                   | Yes                   | Yes             | Mandatory, if over \$100,000    |

(2) Most responsible bidder contracts shall be awarded to the most responsive bidder. In determining "most responsive bidder", in addition to price, the purchasing director may consider:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. Compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject; of the contract;
- i. The number and scope of conditions attached to the bid.

(k) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the purchasing director and filed with the papers relating to the transaction and held for a period of no less than twelve (12) months.

(l) Bids—Local vendors. When not prevented by law or regulation, local vendors having a physical place of business within the municipal boundaries shall be given a five (5) percent preference in bid comparison, not to exceed two thousand five hundred (\$2,500); i.e., if the local bid is no more than five (5) percent higher than the next lowest bid, and if all other qualifications for accepting the bid are met, with quality and service being equal, the contract shall be awarded to the local bidder. If two (2) or more of such bids are submitted by local bidders, the City Manager shall award the contract to one of the local tie bidders.

(m) Purchasing bonds. The purchasing director shall have the authority to require a performance bond, before entering into a contract, in such form and amount as he/she shall find reasonably necessary to protect the best interest of the city.

(n) Payment bond/labor and material bond. The purchasing director may require a payment bond and a labor and material bond, before entering into a contract, in such form and amount as he/she shall deem necessary to protect the best interest of the city. *If a contract is to improve real*

*property, and the contract is in a sum that exceeds fifty thousand dollars, the City shall require the contractor to provide a labor and material payment bond in the full amount of the contract as provided for in the South Carolina Code of Laws, 1976, section 29-6-250, as amended.*

(Ord. 2006-2-16D, § 1, 3-2-06)

(o) Sole source procurement. A City contract may be awarded without competition when the City Manager or designee, determines in writing, after conduction a good faith review of available sources, that there is only one source for the required supply, service, or construction item or an item has a unique characteristic, extreme durability or other quality not found in competitors' products.

Sec. 2-174.2. - Materials testing.

The purchasing director shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the purchasing director shall have the authority to make use of laboratory facilities of any agency of the city government or any outside laboratory.

(Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-175. - Financial interest of city officials and employees prohibited.

No member of the city council or any officer or employee of the city shall have a financial interest in any contract or in the sale to the city or to a contractor supplying the city of any land or rights or interests in any land, material, supplies or services; except when a majority of the city council determines such exception in the best interest of the city, provided, that no councilman whose interest is involved shall vote on the question. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the city shall render the contract voidable by the city manager or the city council.

(Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-176. - Records of open market orders and bids.

The purchasing director shall keep a record of all open market orders and the bids submitted in competition thereon, and such records shall also be open to public inspection.

(Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-177. - Stock reports.

All offices, departments or agencies of the city government shall submit to the purchasing director, at such times and in such forms as he/she prescribes, reports showing stocks of all supplies which are no longer used, or which have become obsolete, worn out or scrapped.

(Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-178. - Surplus stock.

The purchasing agent shall have authority to transfer surplus stock to other offices, departments or agencies of the city government or dispose of that property in accordance with the provisions in this article.

(Ord. 2006-2-16D, § 1, 3-2-06)



Sec. 2-179. - Supplies unsuitable for public use, sale or exchange.

The purchasing director shall have the authority to sell all supplies which have become unsuitable for public use, or to exchange the same for or trade in the same on, new supplies. Such sales shall be made to the highest bidder, and in conformance with Section 2-172. All moneys received from such sales shall be paid into the appropriate fund of the city.

(Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-180. - Gifts and gratuities.

No employee shall accept gifts, gratuities, entertainment or loans from organizations, business concerns or individuals with whom he/she has, or may have, an official relationship or with whom he/she conducts, or may conduct, business for City of Hardeeville. Promotional items of nominal value, or less than one hundred dollars (\$100), provided by vendors or contractors, may be retained for use by City employees, but are not to be considered in any manner as a basis for determining vendor or contractor selection. Vendor or contractor selection is to be determined strictly in accordance with Section 2-172.

(Ord. 2006-2-16D, § 1, 3-2-06)

Sec. 2-181. - Cooperative purchasing.

The purchasing director shall have authority to join with other units of government in cooperative purchasing plans when the best interests of the city would be served thereby; provided that the purchasing director of the city is given the authority to make purchases of supplies and equipment through the property division of the State Fiscal Accountability Authority or other contract approved by the State of South Carolina pursuant to the State of South Carolina Consolidated Procurement Code, without the formality of publication and receiving competitive bids. Examples of such cooperative purchasing is State of South Carolina contracts, General Service Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and U.S. Communities.

(Ord. 2006-2-16D, § 1, 3-2-06) - State Law reference. S.C. Code 1.

Sec. 2-182. - Council may grant exception for certain items or projects.

(a) City council, upon recommendation of the city manager or upon its own initiative, may exempt by resolution specific items, services, or projects from the purchasing procedures required in this Code when council finds that such exemption is in the interest of the city and its citizens.

(b) The following services and/or procurements shall be exempt from the provisions of these procedures:

- (1) Works of art for museum and public display.
- (2) Published books, library books, maps, periodicals, technical pamphlets.
- (3) Copyrighted educational films, filmstrips, slides and transparencies.
- (4) Postage stamps, postage fees and telephone service.
- (5) Professional dues, membership fees and seminar registration fees.
- (6) Medicine and prescription drugs.
- (7) Utilities including gas, electric, water and sewer.
- (8) Advertisements in professional publications or newspapers.
- (9) Food and beverage items.
- (10) Credit/bank card services.
- (11) Articles for commercial sale by all governmental bodies.
- (12) Professional services, including but not limited to the following:
  - a. Accounting services;
  - b. Advertising and marketing services;
  - c. Environmental remediation services;

- d. Environmental surveying and testing services;
- e. Financial feasibility services;
- f. Governmental relations services;
- g. Insurance consulting and procurement services;
- h. Legal services;
- i. Maintenance and equipment servicing services;
- j. Management and management consulting services;
- k. Master planning services, including but not limited to master planning design services;
- l. Public relations services;
- m. Underwriting and financial services; and
- n. Professional services under continuing contract with the city.

(c) The term "exempted services" shall include out-of-pocket expenses and other charges billed to the corporation 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.

(d) Nothing herein shall preclude the purchasing director from selecting any such professional consulting services pursuant to a competitive selection process.

(Ord. 2006-2-16D, § 1, 3-2-06)

#### Sec. 2-183. - Exemption for real property.

(a) With prior approval of the city council, the leasing of real property for governmental use shall be negotiated by the city manager, or his designee.

(b) With prior approval of the city council, the purchase of real property for governmental use shall be negotiated by the city manager, or his designee.

(Ord. 2006-2-16D, § 1, 3-2-06)

#### Sec. 2-184. - Resolving protests.

(a) Right to protest. Any actual or prospective bidder, proposer or contractor, who is aggrieved in connection with the solicitation or award of a contract, may protest to the purchasing director. The protest, setting forth the grievance and the grounds therefor, shall be submitted in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto, but in no circumstance after fifteen (15) days of notification of award of contract.

(b) Authority to resolve protests. The purchasing director shall have the authority to settle and resolve a protest of an aggrieved bidder, proposer or contractor, actual or prospective, concerning the solicitation or award of a contract. If the protest is not resolved by mutual agreement within five calendar days of the notice of protest, the parties shall submit the dispute to non-binding mediation, in accordance with the requirements (except timing) and procedures of civil mediation as set forth in the South Carolina Code of Law which shall be concluded within ten calendar days of the notice of protest.

(c) Decision. Should the parties fail to resolve the protest in mediation, the purchasing director shall promptly issue a decision in writing, stating the reasons for the action taken. A decision of the purchasing director 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.

(Ord. 2006-2-16D, § 1, 3-2-06)

#### Sec. 2-185. - Application of procedures.

(a) General application. These procedures apply only to contracts solicited or entered into after the effective date of these procedures.

(Ord. 2006-2-16D, § 1, 3-2-06)

Secs. 2-186—2-200. - Reserved.