

**AN ORDINANCE AMENDING SECTION 22 PURCHASING ORDINANCE OF THE  
SULLIVAN’S ISLAND CODE OF ORDINANCES IN ITS ENTIRETY**

**WHEREAS**, under the State Procurement Code, effective July 30, 1981, all local governments in South Carolina are required to adopt a purchasing or procurement ordinance by July 1, 1983; and,

**WHEREAS**, the Town desires to adopt an ordinance and set of procedures that shall insure the necessary internal controls and accounting standards; and,

**WHEREAS**, the Town of Sullivan’s Island desires to adopt an ordinance and set of procedures embodying sound principles of appropriately competitive procurement;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL IN MEETING DULY ASSEMBLED, Section 22 shall be amended in its entirety as follows:

SECTION 22

PURCHASING ORDINANCE

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## SECTION I – ETHICS

1. Financial interests – Any purchase order or contract within the purview of this ordinance in which any agent, officer, or employee of the town is financially interested, directly or indirectly, shall be void except that before the execution of a purchase order or contract, the Council shall have the authority to waive compliance with this section when it finds such action to be in the best interest of the town.
2. Rebates, gifts, gratuities, kickbacks – Every officer and employee of the city is prohibited from accepting directly or indirectly from any person, company, firm or corporation to which any such contract is or might be awarded any rebate, gift, money, or anything of value whatsoever, except where given for the use and benefit of the Town or where accepted with the express consent of Council.
3. No person shall offer, give or agree to give any employee or officer nor shall any employee or officer solicit, demand, accept or agree to accept from another person a gratuity, kickback, or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation, or any part of a program requirement or a purchase request, influencing the consent of any specification or purchasing standard.
4. Strict compliance with S.C. Code Sections 5-7-130 and 5-21-30 is required of all Town officials and employees.

## SECTION II – PURCHASING AGENTS

The Town Administrator and the Town Comptroller shall serve as the purchasing agents for the Town. The purchasing agents shall be responsible for and supervise:

1. The purchase of the highest quality supplies, materials, equipment and contractual services required by an office, department or agency of the Town at the least expense possible.
2. To promote an understanding of sound purchasing policies and procedures throughout the departments of the Town.
3. To determine the most efficient and economical means of securing an item or service without sacrificing the desirable control and principle of sound purchasing.
4. The storage and distribution of all supplies, materials and equipment required by any office, department or agency of the Town.
5. Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any office, department or agency of the Town. Such specifications shall be definite and certain.
6. Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment in storage areas.
7. Maintaining a current list of qualified suppliers who have requested their names be added to a "bidders list". The purchasing agents shall have authority to remove temporarily the names of vendors who have defaulted on their bids or contracts, attempted to defraud the Town or who have failed to meet established specifications or delivery dates.
8. Obtaining as full and open competition as practical on all purchases, contracts and sales.
9. To maintain operating and maintenance cost records for all Town-owned equipment above the Town's capitalization threshold.
10. To determine that all purchases comply with local, state and federal laws.

### SECTION III – INFORMAL PURCHASING AND BIDDING PROCEDURES

1. Purchase orders shall be used for purchases in excess of \$100.
2. When the value of purchases for supplies, services, goods or construction does not exceed \$1,000, a limited purchase order (LPO) shall be used. The LPO shall be signed by the department head certifying that each transaction is appropriate and insuring that no

abuse or unauthorized use has occurred. No other signature is required on these transactions.

3. When the value of purchases for supplies, services, goods or construction is estimated to be in excess of \$1,000 and less than \$5,000, and the amount for the purchase has been approved in the current fiscal year's budget, a Standard Purchase Order (SPO) shall be signed by the department head certifying that each transaction is appropriate and insuring no abuse or unauthorized use has occurred. The purchase order shall then be signed by one of the following, Mayor, Town Administrator, or Town Comptroller.
4. When the value of purchases for supplies, services, goods, or construction is estimated to be in excess of \$5,000 and less than \$10,000, and the amount for the purchase has been approved in the current fiscal year's budget, the use of formal sealed bidding or competitive sealed proposals shall not be required. Two oral quotes may be obtained by the department head and given to the Town Administrator, unless only one vendor is available. The names of the two vendors and the solicited quotations shall be listed on the face of the purchase order. The purchase order shall be signed by two of the following, Mayor, Town Administrator or Town Comptroller.
5. When the value of purchases for supplies, services, or construction is estimated to be in excess of \$10,000 and less than \$20,000, and the amount for the purchase has been approved in the current fiscal year's budget, purchases shall be made by obtaining written competitive quotations or bids from vendors unless the goods or services are available under state contract as awarded by the State Budget and Control Board, Division of Material Management. All open market purchases shall be based on at least three quotations, unless three vendors are not available. The names of the vendors and the solicited quotations shall be listed on the face of the purchase order. The recommended award, along with a copy of the purchase order, shall be submitted to the Town Administrator or the Town Comptroller for review and authorization. If the Town Administrator or the Town Comptroller, after reviewing the recommended award, is satisfied with the process and all submitted documentation, then the purchase order shall be signed by two of the following, Mayor, Town Administrator or Town Comptroller.
6. All purchases and contracts and goods or services in excess of \$20,000 shall be made in accordance with the competitive formal bidding procedures as defined in Section IV, unless the goods or services are available under state contract as awarded by the State Budget and Control Board, Division of Material Management. All vendors and their bids shall be listed on the face of the purchase order. The recommended award, along with a copy of the purchase order, shall be placed on the Town Council meeting agenda for

Council consideration. Council shall have the authority to award or reject the recommended award of bid.

7. The Town may also obtain goods and services from an awarded bidder in a competitive bidding process utilized within the preceding six months by another political subdivision of the state for substantially the same goods or services when the Town Administrator has good reason to believe that the awarded bidder is the lowest qualified bidder at the time the city obtains such goods and services.
8. Purchase orders shall not be artificially divided, fragmented, or structured so as to constitute a purchase under this section or circumvent the requirements or intent of Sections I through VIII.
9. No purchase shall be made until it is determined by the department heads that such funds are available for said purchase.
10. Incomplete purchase orders will not be accepted.
11. It shall be incumbent upon all department heads to assure that all invoices are delivered to the Town Comptroller in a timely manner in order that discounts may be taken.
12. All expenditures, except emergency expenditures as determined by the Town Administrator, shall cease as of June 1 of each fiscal year. All invoices for all purchases must be submitted to the Town Comptroller by June 30 of each fiscal year. Department heads will be held accountable for any invoices not submitted by said date.
13. The Town Administrator may adopt other procedures for:
  - A. Small purchases such as the use of petty cash;
  - B. Charge accounts; or
  - C. Request for payment vouchers.

#### SECTION IV – FORMAL BIDDING PROCEDURES

##### 1. ADVERTISING; BIDDERS' LIST

- A. A notice inviting bids shall be published at least once in a newspaper having a general circulation in Charleston County at least ten (10) days prior to the date set for formal

- opening of written bids. The notice shall include a general description of the goods or services to be purchased, shall state where bid blanks and specifications may be secured, and shall specify the time and place for opening of bids.
- B. The Town Administrator shall, in conjunction with department heads, develop and update a bidders' list which shall be limited to commodities that are similar in character.
    - i. All responsible, interested suppliers may be added to the bidders' list at their request.
    - ii. The Town Administrator shall also solicit sealed bids from all suppliers on the bidders' list by sending them a copy of the newspaper notice inviting bids, or other notice as will acquaint them with the proposed purchase.
  - C. In the event that, after advertising as aforesaid, no bids received, the Town Administrator shall, with approval of the Town Council, solicit bids by mail, telephone, newspaper or by any other reasonable manner to secure responsible bidders.

## 2. BID DEPOSITS

- A. When it seems necessary by the Town Administrator, bid deposits shall be prescribed in the public notices inviting bids. The amount of the deposits shall be 5% of the bids and shall be in the form of a certified check or bond.
- B. Unsuccessful bidders shall be entitled to the return of the surety required by the Administrator within 30 calendar days after opening of bids.
- C. Upon the failure of a successful bidder to enter into a contract within seven calendar days after the Town tenders the proposed contract, the bidder shall forfeit the bid deposit.

## 3. SUBMISSION AND OPENING OF BIDS

- A. All bids shall be submitted to the Town Administrator in a sealed condition with identification contained on the envelope containing the bid.
- B. Bids shall be submitted at the designated place no later than the time stated in the public notice inviting bids.

- C. Bids received after the bid date and time indicated on the invitation to bid may not be considered unless the delay was due to an error of the Town.
- D. Bids shall be opened at a public meeting at the time and place stated in the public notice.
- E. A tabulation of all bids received shall be made available for public inspection.

#### 4. AWARD OF CONTRACT

- A. The Town Administrator shall notify the successful bidder of the award made by the Town Council.
- B. Contracts shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, factors such as the following shall be considered:
  - i. The ability, capacity and skill of the bidder to provide the services required;
  - ii. The capability of the bidder to perform and the contractor to provide the services promptly, or within the time specified without delay or interference;
  - iii. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
  - iv. The quality of performance of previous contracts or services;
  - v. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
  - vi. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services;
  - vii. The quality, availability and adaptability of the suppliers or contractual services to the particular use required;
  - viii. The ability of the bidder to provide future maintenance and service for the use of the subject: of the contract; and
  - ix. The number and scope of conditions attached to the bid by the bidder, if any.
- C. When the award is not made to the lowest bidder, a full and complete statement of the reasons for the action shall be prepared by the Town Administrator and filed with the other documents relating to the transaction.
- D. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a bidder whose principal place of business is within the Town, or if not within the Town, within the county, if not

within the county, then within the state. If the said bidders are not involved, the Town Administrator shall award the contract to one of the outside tie bidders by drawing lots in public.

- E. If no bids are received, quotations may be solicited by the Town Administrator in the manner set forth in SECTION III (5).
- F. The Town Council may reject any or all bids, in whole or in part, in order to protect any public interest.

## 5. BONDS

- A. To protect the interest of the Town, the successful bidder for a contract for conservation, improvements or repair shall be required to furnish a performance bond and a payment/labor and material bond in the amount of 100% on the proposed contract if deemed necessary by the Town Administrator. The requirement of such bonds shall be stated in any bid instructions.
- B. If the bonds are not provided within ten calendar days of the award of the bid, the award shall be void.

## SECTION V – MATERIAL TESTING

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

## SECTION VI – STOCK REPORTS AND SURPLUS STOCK

1. All offices, departments or agencies of the Town shall submit to the Town Comptroller, at such times and in such form as the Town Comptroller deems appropriate, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.
2. The Town Administrator has the authority to transfer surplus stock to other offices departments or agencies of the Town.

## SECTION VII – SUPPLIES UNSUITABLE FOR PUBLIC USE, SALE OR EXCHANGE

The Town Administrator 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 this ordinance. All proceeds received from such sales shall be paid to the appropriate fund of the Town.

## SECTION VIII - SOLE SOURCE PURCHASING

1. A contract may be awarded for supplies, services, professional services, or construction without formal competitive bidding or other competitive purchasing in accordance with SECTIONS I through VIII. A contract may be awarded under this section only when the Town Administrator and the Town Comptroller determine in writing that there is only one source for the required purchasing or construction or when there is only one source which is compatible with existing equipment, software, or things of this nature. A sole source purchase may not be made if a reasonable alternative solution exists. The written determination must include findings which support the determination that only one source exists. The authority to make the determination and findings required by this division shall not be delegated.
2. The using department shall submit written evidence to support a sole source determination. The Town Administrator or Town Comptroller may also require the submission of cost or pricing data in connection with an award under this section.
3. The department head or Town Administrator or Town Comptroller shall negotiate with the single supplier, to the extent practicable, to obtain the most advantageous contract to the Town.

## SECTION IX – COOPERATIVE PURCHASING

The Town Purchasing Agents shall have the authority to join with other governmental units in cooperative purchasing plans when the best interest of the Town would be served thereby.

## SECTION X – EMERGENCY PURCHASES

In the case of emergency which threatens the public health, safety, and welfare of the Town, the Administrator, subject to the approval of a least four Council persons, shall have the authority to suspend the formal competitive bidding procedures herein described to the extent required to meet the emergency. Where possible, the approval shall be in writing. If this is not possible due to the nature of the emergency, the approval shall be reduced in writing within a reasonable time.

## SECTION XI – FILING OF AN APPEAL

1. An interested party may appeal the award of a bid, the proposed award of a bid, or a solicitation for supplies, services, professional services, or construction by filing with the Town Administrator, within ten days of the award of the bid or contract, the following information in writing:
  - A. Name, address, and telephone number of the protester;
  - B. Signature of the appellant or the appellant's representative;
  - C. Identification of the bid under appeal;
  - D. A detailed statement of the legal and factual grounds of the appeal, including copies of relevant documents; and
  - E. The form of relief requested.
2. The appeal shall be placed on the agenda for Council consideration at the next Council meeting scheduled after the appeal is received. Town Council's authority shall be rendered in a manner consistent with this ordinance.
3. The Town Administrator shall give written notice of Town Council's decision to the appellant within twenty days of the rendering of the decision. Town Council's decision shall state the reasons for the actions taken.
4. A decision rendered herein is considered final and conclusive. Such a decision is the final administrative review and the decision of the Town which can be appealed to the Charleston County Court of Pleas.
5. If an aggrieved bidder demonstrates to Town Council, by a preponderance of evidence, that such bidder should have been awarded a contract pursuant to this Ordinance, but was not, then such bidder may petition Town Council for reimbursement of its actual costs, not to exceed Five Thousand (\$5,000) Dollars, incurred in connection with the solicitation, including bid preparation, which shall be such bidder's sole remedy at law or

in equity for Town's failure to award the contract to the bidder. Upon receipt of such petition, Town Council may order the computation of a reasonable reimbursement amount and make such reimbursement as it deems equitable, including reimbursement of bid preparation costs, not to exceed the sum of Five Thousand and no/100 (\$5,000) Dollars.

## SECTION XII – PENALTY

1. The Mayor may impose the following sanctions of any employee for violations of this ordinance:
  - A. Oral or written reprimand;
  - B. Suspension; or
  - C. Termination.
2. Penalties are as follows:
  - A. The value of anything transferred or received per Section I in breach of this ordinance by an employee or officer be recovered from either.
  - B. A person who contracts for or purchases supplies, equipment, services, professional services, or construction in a manner the persons knows to be contrary to the requirements of Sections I through VIII is liable for all costs and damages to the Town arising out of the violation.
  - C. Any person, firm or corporation violating any of the provisions of Section I through VIII shall be deemed guilty of a misdemeanor and upon conviction therefore shall be fined in an amount not exceeding \$500 or be imprisoned for a period not exceeding 30 days or be both so fined and imprisoned.

## SECTION XIII – INVALIDATION OF ORDINANCE

Should any part of this Ordinance be held invalid by a Court of competent jurisdiction, the remaining parts shall be severable there from and shall continue to be in full force and effect.

## SECTION XIV – CONFLICTS WITH ORDINANCES OR RESOLUTIONS

All resolutions, ordinances, or parts of resolutions or ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as the same affect this Ordinance.

#### SECTION XV – DATE OF ENFORCEMENT

This Ordinance takes effect and is in full force immediately. (Ratified 1-15-08)