

	<p><u>Purchasing</u></p> <p>Purchasing and Contracting Policy</p>	<p>Effective: October 11, 2022</p>
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CHAPTER 38 - Procurement

Introduction

Sec. 38.01 - General

This Purchasing and Contracting Policy (this “Purchasing Policy”) of the City of Westminster, South Carolina (the “City”) is designed to describe and explain the responsibilities for the administration of the City’s purchasing and contracting program. This Purchasing Policy describes the procedures to be utilized in the daily administration and management of the procurement function.

It is the goal of the City to provide for the fair and equitable treatment of all parties involved in public purchasing for the City, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity for the City. The City does not discriminate against any vendor on the basis of race, color, religion, national origin, gender, age, disability, or veteran status in any area of the purchasing process.

This Purchasing Policy is subject to periodic revision as an administrative policy, subject to the final approval of the City Council. This Purchasing Policy shall be codified at Chapter 38 of the City’s code of ordinances.

Responsibilities of Purchasing Director

Sec. 38.02 – Purchasing Director

1. The City Administrator shall serve as the Procurement Director.
2. The Procurement Director shall generally be responsible for establishing and administering this Purchasing Policy, which includes: initiating reports necessary to permit analysis of purchasing performance; negotiating and recommending contracts; consolidating purchases of like or common items; and analyzing prices paid for materials, equipment, and services.
3. The Procurement Director shall serve all departments and divisions, except for the acquisition of materials for use by the Utilities Department, the Procurement Director may delegate such procurement to the Utilities Department Warehouse Supervisor.

Sec. 38.03 – Objectives

The primary objectives of this Purchasing Policy are to: (a) procure for the City the highest quality supplies, equipment, and/or services for the least possible cost; (b) promote an understanding of efficient and sound purchasing throughout all departments and divisions of the City; (c) determine the most efficient and economical means of obtaining an item and/or service without sacrificing the controls and principles of sound purchasing; (d) assist in developing competitive specifications for use by all departments and divisions; (e) promote competition and endeavor to obtain full and open competition on purchases, where applicable; (f) maintain forms as necessary for the successful operation of purchasing needs; (g) exchange ideas and information with other local government purchasing departments in an effort to solve common purchasing problems; (h) exercise control over surplus, excess, and junk materials; (i) coordinate with departments and divisions to maintain inventories at a satisfactory level commensurate with the budget; (j) work with departments and divisions to promote good will between the City and its vendors; (k) assist all departments and divisions during budget preparation; (l) comply with all local, state, and federal laws in the administration of purchasing and contracting functions; (m) ensure an insurance file is maintained on all City vehicles in compliance with requirements of the City's insurance carrier; (n) ensure property insurance files are maintained on all City buildings and structures in compliance with requirements of the City's insurance carrier; and (o) coordinate real estate appraisals as required.

Purchasing In General

Sec. 38.10 – Purchasing Standards

1. All requests for prices and/or services, and all purchases shall be made under the terms of this Purchasing Policy. In certain instances, authority to request prices and purchase items may be delegated to others.
2. The Procurement Director shall have full authority to question or inquire as to the quality, quantity, and type of materials and services requested by any department head or division manager to ensure that the best interests of the City are served.
3. No person employed by the City, including the Procurement Director, shall receive any benefit or profit from any contract or purchase made by the City.
4. The Procurement Director shall buy for the needs of the City only.
5. The Procurement Director shall strive to maintain strong and enduring relationships with vendors of proven ability and with those who have a desire to meet the needs of the City. Purchasing activities shall be conducted so that vendors will value the City's business and will make every effort to furnish the City's requirements on the basis of quality, service, and pride.
6. The City will buy and/or contract only with those vendors who have adequate financial strength, high ethical standards, and a record of adhering to specifications, maintaining shipping promises, maintaining construction, and giving a full measure of service. New vendors will be

given due consideration as multiple sources are necessary to ensure availability of materials and/or services.

7. The City will strive to avoid unfair practices and give all qualified vendors an equal opportunity to do businesses with the City.

8. Notwithstanding other provisions of this Purchasing Policy, the Procurement Director or his or her designee shall act as the City's representative on all matters pertaining to purchasing and contracting activities.

9. The Procurement Director shall not knowingly issue a PO (as such term is defined herein) or execute a contract when there is evidence of a conflict of interest. In instances when a conflict of interest may exist, but its existence is not clearly established, the Procurement Director shall refer the matter to the City Attorney, whose opinion will be final.

10. Except for emergencies or other authorized exceptions, no procurement or commitment of monies shall be made by any department, or employee of the City unless monies have been appropriated and are available in the appropriate account. Monies can be transferred from other funds with the approval of the City Administrator, or designee.

Sec. 38.11 - Procurement Ethics

1. The following statements are applicable to all City employees who participate in the procurement process:

(a) City employees shall not obligate the City financially or otherwise by any means, including but not limited to POs and contracts, when the employee has a personal, material, financial or other interest in the obligation.

(b) 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.

(c) City 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 City 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.

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

Purchasing/Contracting Procedures

Sec. 38.20 – Procurement Thresholds

1. *\$1 to \$9,999 – Delegated Authority*

Competitive bidding is not required within the threshold captioned above. At the department head's discretion, a PO will be issued to the vendor recommended by the requesting department. The department manager, or his respective designees, must approve the purchase requisition in writing or through required financial software that authorizes the purchase. Each department should exercise good judgement when making purchases within this threshold. Each department manager, or designee, shall ensure funds are budgeted sufficient for the purchase. However, for any purchase in the range of \$5,000 - \$9,999, the Procurement Director (or her or his respective designee) must approve such purchase in writing or through required financial software before the purchase is made.

2. *\$10,000 to \$24,999 – Written Quotations*

Competitive pricing is required within the threshold captioned above. Departments shall request written quotations from vendors in order to obtain competitive pricing. At minimum, two written quotes shall be solicited. Quotes received via fax or electronic mail shall be sufficient for purposes of establishing the writing requirement. If two quotes cannot be solicited, please see Sec. 38.26 below. Absent unique circumstances, the award will be made to the lowest responsible quote. The Procurement Director (or her or his respective designee) must approve of any purchase within this range in writing or through required financial software before the purchase is made.

3. *\$25,000 to \$99,999 – Informal Solicitations for Bids or Proposals*

(a) Within the threshold captioned above, the City, acting through the Procurement Director, shall issue a written Invitation for Bids (IFB), a Request for Proposals (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 a RFP may be used.

(b) In the case of an IFB, three written bids, at minimum, should be solicited. If three bids cannot be solicited, please see Sec. 38.26 below. Quotes received via fax or electronic mail shall be sufficient for purposes of establishing the writing requirement. Award shall be made to the lowest responsive and responsible bidder. For normal competitive purchases, the Procurement Director (or her or his respective designee) shall approve any such purchase in writing or through required financial software before the purchase is made.

(c) 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 Director for processing. For normal competitive purchases, the Procurement Director (or her or his respective designee) shall approve the purchase in writing or through required financial software before the purchase is made.

4. *\$100,000 and greater – Formal Bids or RFQ/RFPs*

(a) Except as otherwise provided herein, competitive, sealed bidding is required for all purchases of \$100,000 or more and the Procurement Director.

(b) Competitive bidding shall be implemented under the procedures set forth in Sec. 38.23 below.

(c) Procurements involving construction may use an alternative delivery method described in Sec. 38.26(3), which the City Administrator determines is most advantageous to the City and will result in the most timely, acceptable quality, economical, and successful completion of the construction project.

(d) It is anticipated that a contract or an agreement shall be executed and delivered by the City for all purchases in excess of \$100,000. All contracts or agreements for purchases in excess of \$100,000 shall be reviewed by the City Attorney and approved by the City Council.

5. To the extent any items in this Sec. 38.20(3) or (4) above have not been authorized in the City's approved budget ordinance, or such items exceed 25% of the amount budgeted for such item, such purchase shall additionally be approved by the City Council.

Sec. 38.21 - Sole Source Procurement

1. 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: (a) have the ability to deliver a unique material or service; (b) have technical expertise or qualifications; (c) have software license; (d) have the ability to deliver at a particular time; or (e) have the ability to fulfill the needs for a special purpose or situation from a qualified provider.

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

3. (a) The department head (or designee) may use "delegated authority" practices for sole-source purchases \$9,999 and under. All sole-source purchases in the range of \$5,000 to \$9,999 shall be approved in writing or through required financial software by the Procurement Director before the purchase is made.

(b) For sole source purchases \$10,000 to \$24,999, the Procurement Director must approve the written sole source justification before the purchase may be made.

(c) For sole source purchases in excess of \$25,000, any sole source procurement authorization must be formally approved by the City Council.

Sec. 38.22 – Local Vendor Preference

1. To qualify for a local vendor preference the following requirements must be certified by the vendor:

(a) The vendor must maintain an office within the legally defined boundaries of the City, the County of Oconee, the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, the County of Spartanburg, or the State of South Carolina;

(b) The vendor must have a majority of full-time employees, chief officers and managers regularly conducting work and business from the office listed in subsection (1)(a) above. If located in the City, the vendor must have held a valid city business license for a consecutive period of at least two years prior to the date of the application for certification. If not located in the City, the vendor must have maintained the eligible office for at least three consecutive years in addition to the qualifications under subsection (1)(a) above; and

(c) The vendor must submit a local preference certified application in a format and manner determined by the Procurement Director.

2. Use of the local vendor preferences during the bid evaluation process:

(a) For comparing bids, a vendor who meets certification criteria established in subsection (1) above and is otherwise a qualified vendor shall qualify for local vendor preference based on the location of the eligible office as follows:

(i) Eligible office located within the City limits will be entitled to a bid price reduction of seven percent, not to exceed a maximum of \$10,000.00.

(ii) Eligible office located within the County of Oconee (but not within the City limits) will be entitled to a bid price reduction of five percent, not to exceed a maximum reduction of \$8,000.00.

(iii) Eligible office located in the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, or the County of Spartanburg will be entitled to a bid price reduction by three percent, not to exceed a maximum reduction of \$4,000.00.

(iv) Eligible office located in the State of South Carolina that does not qualify for one of the higher percentage preferences will be entitled to a bid price reduction of two percent, not to exceed a maximum reduction of \$2,500.00.

(b) A vendor may claim only one preference based upon the location of the eligible office.

(c) A vendor with no eligible office may claim a local vendor preference in instances where subcontractors are proposed that would be eligible under subsection (1) above. In order

to claim a preference based upon eligible subcontractors, the proposer must certify the value of the subcontractor award compared to the total contract amount. The subcontractor must submit a certified application as required in subsection (1)(c) and be fully qualified under the provisions of this section. The preference will be the product of the percentage of the contract price certified to eligible subcontractors applied to the preference percentage for which the subcontractors would be eligible.

(d) A subcontractor preference may not exceed the dollar limits imposed in subsection (2)(a) based upon the eligible offices of the respective subcontractors.

(e) The final contract price will reflect the original bid amount before the local vendor preference was applied.

3. All requests for qualifications for professional services shall be excluded from the local vendor preference.

4. The Procurement Director shall maintain a registry of eligible vendors/contractors. Inclusion on the registry will be limited to those having submitted a request for inclusion and certified eligibility based upon the criteria established in subsection (2).

5. In instances where a contract price is anticipated to exceed \$100,000.00, and the use of subcontractors is reasonably anticipated, the Procurement Director shall require documentation by proposers of attempts to include local vendors/contractors. At minimum, the documentation shall substantiate attempts to include subcontractors eligible for a preference of three percent or greater to equal a goal amount of 15 percent or more of the proposed contract price. A proposer should provide an explanation of reasons that the local preference goals were not achieved. Documentary requirements shall be included in the bid specifications and only apply when the requirements are so documented. There shall be no penalty for failure to meet the 15 percent goal. However, failure to include required documentation shall be considered an informality in the bid.

6. The Procurement Director shall establish procedures to promote the various local vendor preferences and to provide notice in bid solicitations of the availability of the preferences. If a local vendor preference is not recited in a bid solicitation, it shall not be applicable to such bidding.

Sec. 38.23 – Competitive Bidding

1. *Competitive Sealed Bids.* Under this method, the City issues an IFB, and prospective bidders must submit bids in accordance with the bid invitation. The City shall select the bid from the responsible and responsive bidder who submits the lowest price and meets all of the requirements included in the bid invitation.

2. *Competitive Sealed Proposals.* Under this method, the City issues a RFP or RFQ, which contains a description of the project and the factors that will be used to evaluate submitted proposals. The RFP or RFQ may or may not require a final price or fee to be included with the proposal. Price may be one of the factors considered by the City when making its final decision,

but it will not be the only factor. All submitted proposals are evaluated in accordance with the criteria provided in the RFP or RFQ and the City must make its final selection based on such criteria.

3. *Minority and Women Owned Businesses.* The City is determined to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement activities, including, but not limited to, employment, construction projects, and lease agreements consistent with the laws of the State of South Carolina.

4. *Plans and Specifications*

(a) For construction projects, the City's Procurement Director or a third-party engineering firm, in concert with the affected department head, shall generate plans and create specifications. The date set for the bid opening must allow ample time for prospective bidders to prepare their bid. Public bid notices may be run in one or more newspapers of general circulation or trade journals as the Procurement Director deems necessary. The formal bid may also appear on the City's website and available trade journals. The Procurement Director or department head, acting on the advice of the City's engineer or other consultants, as necessary, will determine what construction trades will be involved on the project (e.g., subcontractors, drywall, electrical, fencing, grading, excavating/clearing, landscaping, masonry, painting, plumbing, etc.).

(b) The City 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, RFP or RFQ, the City may reserve 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 City. All discussion shall be limited to the offeror's products, goods or services, and no discussion shall be permitted regarding offers by others.

(c) As may be provided in the IFB, RFP or RFQ, 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 respective solicitation for bids. 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.

(d) Bids received late will not be accepted or considered for the award. Bids are opened publicly at a specific date and time. A bid tabulation shall be produced and made available to all interested bidders. No bid will be awarded until the Procurement Director, department head, and engineer have reviewed each bid. Any bids in excess of \$100,000 shall be submitted to City Council for final approval.

(e) In the event the Procurement Director or department head desire to award the contract to an offeror other than the lowest bidder, such party (upon the advice of a third-party

engineer or other consultant) shall submit a written request to City Council detailing reasons for the request. The request must be approved by City Council, before the contract can be awarded to a contractor other than the one determined to be the lowest responsible and responsive bidder.

(f) Upon proper authorization from the City Council, the agreements/contracts shall be negotiated and thereafter the purchasing agent will generate an “authorization-to-proceed” for the contractor.

5. *Bid Security – Construction Projects*

The City 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. Unless otherwise informed by one of the City’s consultants to provide a higher percentage, the bid security shall be in an amount equal 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 City, be forfeited to the City and retained and deposited to the City’s account. In such an instance, the City may renegotiate with the second lowest, responsive and responsible bidder, or resolicit new bids; whichever is determined in the best interest of the City.

6. *Performance Bonds*

(a) When construction contracts are awarded, labor, material, and performance payment bonds may be required at the option of the City 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.

(b) 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 or such threshold as may be required by South Carolina law. All contract bonds shall be for a period of not less than one year from the date of the final payment.

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

(d) In lieu of corporate surety, material, labor, and performance payment bonds, the successful bidder may request to post certified funds with the City in such amounts as may be agreed upon by the Procurement Director and which funds shall be held in accordance with the terms as agreed upon between the City 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.

(e) 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.

(f) 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.

7. *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 City 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 City project is 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.

8. *Licensing*

All contractors and vendors must have the applicable licenses according to the requirements of the South Carolina Department of Labor, Licensing, and Regulation before being awarded a contract or other work by the City.

Sec. 38.24 – Tie Bids

If all bids received are for the same total amount or unit price - quality and service being equal - the contract shall be awarded according to local vendor preference. In the event that local vendor preference still has bids at the same total amount, the contract shall be awarded on the basis of a coin flip.

Sec. 38.25 - Purchase Orders; Change Orders

1. 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 City to pay for goods or services ordered, upon the receipt and proper invoice. Unless a separate contract document is executed, the PO establishes the contractual relationship between the City and the vendor.

2. A PO is a legally binding contract. The PO is the City’s commitment for the value of the material or service ordered.

3. One-time POs are generally issued for a finite quantity of products, construction, or services. Once a PO has been issued, the City’s 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 have been received, and the invoice has been received and approved, payment may be applied.

4. A blanket PO may be used for purchases that are made on an “as-needed” basis. Only items, or services, that are described on the blanket PO may be purchased. Control of the use of the blanket PO is the responsibility of the Procurement Director (or her or his designee). A blanket PO allows 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 City employee may issue a release for specific goods described by the blanket PO pursuant to its terms and conditions.

5. Because the contract or PO is a legal document that represents, or forms the basis of, the contractual relationship between the City and a vendor, any changes to that contract must be in writing, and approved by the department head and Procurement Director. When changes orders are needed, they must be approved in the same sequence as the initial PO up to and including necessary approvals. Any payments to the vendor will be delayed while proper documentation is completed. Furthermore, the contractual rights of the City and the vendor are jeopardized by such unauthorized changes.

Sec. 38.26 - Exceptions to Bidding

1. *Critical/Emergency Procurement*

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

served. The Procurement Director, or designee, may make or authorize others to make, critical procurements when in nature, it is critical to the City and time does not permit for solicitation or re-solicitation and that the method provides that the City's best interest is served. In such cases, the department head must coordinate the procurement with the Procurement Director and receive written approval.

2. *Certain Construction Projects – Generally*

(a) Generally. When negotiating construction projects, the City understands and recognizes that competitive bidding may not be the best project delivery method. As a result, the Procurement Director, in consultation with qualified consultants, is authorized to determine the project delivery method deemed most advantageous to the City, which is the method which is intended to result in the most timely, economical, and successful completion of the construction project. The Procurement Director will have the final approval for the selection of the project delivery method.

(b) Alternative Methods. The following project delivery methods are authorized for procurements relating to construction of any public infrastructure facility: (i) Design-Build; (ii) Design-Bid-Build; (iii) Operation and Maintenance; (iv) Design-Build-Operate-Maintain; (v) Design-Build-Finance-Operate-Maintain; (vi) Construction Management At-Risk; (vii) Construction Management Services; and (viii) Other Special Project Delivery Methods permitted by the State of South Carolina.

3. *Alternative Methods – Construction Projects*

(a) Design-Build is a project delivery method in which the City enters into a single contract for design and construction of a construction project. Procurement of Design-Build services is appropriate when the City does not have the in-house capability to design and supervise the project, and when compliance with technical regulations and best practices for construction is critical. With the assistance of experts, the City may develop performance specifications for the desired infrastructure which can then be used to develop design requirements for submission to Design-Build firms for development. The Design-Build services may be awarded to either (a) the responsive, responsible bidder where price is a factor, or (b) the responsible contractor (selected from a group of pre-approved contractors) who is the low bidder. Errors and omissions insurance is required to cover the architectural and engineering services provided by the offeror.

(b) Design-Bid-Build is a project delivery method in which the City sequentially awards separate contracts, the first for Architectural and Engineering Services to design the project and the second, based on competitive bidding by the City, for construction of the project according to the final design. This is the traditional method of designing and constructing facilities. The procurement of Construction Management Services (see subsection 3(g) hereinbelow) for such a project would make this method a specialized method of procurement.

(c) Operation and Maintenance is a project delivery method whereby the City enters into a single contract for the routine operation, routine repair, and routine maintenance of an existing, or to-be-constructed, project. Operation and Maintenance services shall be procured from prequalified contractors by utilizing competitive sealed proposals submitted in response to

a RFP, which has established the supplies and services required to maintain and operate infrastructure facilities.

(d) Design-Build-Operate-Maintain is a project delivery method in which the City enters into a single contract for design, construction, operation and maintenance of a project over a contractually-defined period. Ownership of the facility may be in the name of the City or leased by the City from a non-profit corporation. All or a portion of the funds required to pay for the services provided by the contractor during the contract period are either appropriated by the City prior to award of the contract or secured by the City through fee or user charges or other sources of revenue. The City should not participate in financing any such project without an opinion from bond counsel or tax counsel. Errors and Omissions insurance is required to cover the architectural and engineering services provided by the offeror.

(e) Design-Build-Finance-Operate-Maintain is a project delivery method in which the City enters into a single contract for design, construction, finance, operation and maintenance of an project over a contractually defined period. No funds are appropriated to pay for any part of the services provided by the contractor during the contract period. Procurement of Design-Build-Finance-Operate-Maintain services shall generally follow procedures outlined above for Design-Build projects with the additional elements of financing and operation incorporated into the project. A preliminary determination by the City should have been made that project revenues would be sufficient, over the length of the proposed contract, to cover design, construction, finance, and operations, and that the traditional Design-Bid-Build approach is inappropriate or impracticable for this project. The City should not participate in financing any such project without an opinion from bond counsel or tax counsel. Errors and Omissions insurance is required to cover the architectural and engineering services provided by the offeror.

(f) Construction Management At-Risk is a project delivery method in which the City awards separate contracts, one for architectural and engineering services to design a project and the second to a construction manager at-risk for both preconstruction and construction of the project according to the design specifications of the architect or engineer. The contract with the construction manager at-risk may be awarded before completion of design. The construction manager at-risk shall assume the risk for construction, rehabilitation, alteration or repair of the project at a fixed or guaranteed maximum price.

(g) Construction Management Services is a project delivery process by which a qualified third-party provides construction leadership with a defined scope throughout various phases of the project (e.g. planning, design and construction). Construction Management Services are typically procured using competitive sealed bidding or competitive sealed proposals and bids may be awarded to either (a) the responsive, responsible bidder where price is a factor, or (b) the responsible contractor (selected from a group of pre-approved contractors) who is the low bidder. Construction Management Services, specifically including a construction manager at-risk, may be procured for any of the alternative delivery methods authorized herein. Errors and Omissions insurance may be required to cover any architectural and engineering services provided by the offeror.

(h) Other Special Project Delivery Methods or combinations of the above may be utilized provided that the City can demonstrate that the delivery methods meet the intent of this

Purchasing Policy and receives the approval of the Procurement Director. Insurance of various types may be required as additional security for the City for the particular method of project delivery.

4. Subject to the review and approval of the Procurement Director (or her or his delegate), purchases of gasoline, diesel fuel, alcohol fuel, propane, motor oil or fuel oil may be made using “delegated authority”, regardless of the size of the purchase.

5. Due to the City's dependence on and its need for continuous operation of its vehicle fleet, special provisions for securing supplies, parts and maintenance for use by City vehicles must be made. Each department head, subject to the review and approval of the Procurement Director (or her or his designee) is authorized to use whatever resources may be available to maintain the City's vehicular fleet, provided approval of the Procurement Director is obtained in writing or through required financial software.

Sec. 38.27 – Exempt Services

The following professions are exempt from competitive bidding requirements, although competitive bidding may be used when in the best interest of the City: professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding. Examples would include, information technology providers, appraiser, architects, engineers, auditor, lawyers (and all legal services), physician, insurance, land-surveying, banking, certain consulting services and other professional services.

Procurement Administration

Sec. 38.30 – Business License Requirement

It is required that each vendor, contractor, or subcontractor awarded a contract with the City either have a current business license or secure a business license for the contract amount of work to be performed for the City within the City limits. A copy of the business license must be submitted prior to execution of contract. No work shall be done by the contractor until a valid business license has been obtained.

Sec. 38.31 – Cooperative Contracts

1. The State of South Carolina enters into a variety of contracts with manufacturers and/or dealers utilized by the state and local governments at all levels. The Procurement Director may procure without competitive bids equipment, supplies, or services which are under current state contract. These commodities may include, but are not limited to, vehicles, tractors, backhoes, radar units, janitorial supplies, office supplies, traffic control equipment, and fuel.

2. General Services Administration (GSA) contract holders make their products available to state and local governments for the same prices charged to federal government agencies. Purchasing may procure without competitive bids, equipment or supplies under contract with GSA, also referred to as Federal Supply Schedules.

3. Various support agencies and organizations, including but not limited to, the Municipal Association of South Carolina, the National League of Cities, the International City/County Managers Association, the National Association of Counties, and Public Technology, Inc., have made available to local governments cooperative procurement programs. The programs are generally the result of a thorough competitive bidding process at the state or national level which fully satisfies the City's procurement requirements. The Procurement Director may utilize such cooperative procurement programs as needed.

Sec. 38.32 – Taxes

The City is exempt from Federal Excise Tax. The City's Tax Exemption Registry Number is available upon request. The City pays South Carolina state sales taxes on all applicable purchases.

Sec. 38.33 – Surplus Property

1. Surplus personal property means property which: (a) has reached or is rapidly approaching an expiration date or the end of its useful life; (b) is worn-out or otherwise no longer useful to the organization for its intended purposes; (c) is obsolete; or (d) too costly to maintain or operate.
2. Items which have little or no salvage value, considering the cost of disposing of same, such as older model computers and printers, may be offered to employees at nominal prices, as established by the Procurement Director, before other means of disposition are considered.
3. Items with salvage value, but which are likely to bring little at a conventional auction, may be sold through an internet site such as www.govdeals.com or any other reputable internet site or auction service which the Procurement Director has determined will offer the most exposure to potential interested buyers, or which will likely result in the highest return for the City.
4. Surplus personal property with trade-in value may also be traded-in to a dealer or vendor in exchange for, or toward the purchase of, items needed by the City.
5. Surplus personal property may also be sold to, traded with, or donated to other governmental entities, if such is found to be in the best interests of the City.
6. Following review, the Procurement Director may request authorization from City Council to sell those real properties owned by the City under the terms and conditions approved by the City Council in accordance with the laws of the State of South Carolina.

Sec. 38.34 – Insurance

1. Except as may be waived in the discretion of the Procurement Director, all contracts awarded by the City shall require that the vendor or contractor agree to hold harmless, indemnify and defend the City, its agents and employees, from any claims for property damage or personal injury (including death resulting therefrom). Such claims shall include, but are not limited to, actual, consequential, incidental or punitive damages. The vendor or contractor shall agree to

maintain sufficient comprehensive general liability insurance, naming the City as additional insured, in the amounts of \$1,000,000.00 per occurrence and \$1,000,000.00 per person. Proof of such insurance shall be given to the Procurement Director by an appropriate certificate-of-insurance issued by the contractor's insurance agent.

2. Further, the vendor or contractor shall ensure prior to commencement of work, that all subcontractors, agents, assigns or employees of the vendor or contractor and subcontractors shall agree to hold harmless, indemnify and defend the City, its agents and employees from any claims for property damage or personal injury (including death resulting therefrom). Such claims include but are not limited to, actual, consequential, incidental or punitive damages. Further, prior to commencement of work, the vendor contractor shall ensure that all subcontractors, agents or assigns of the contractor, maintain sufficient comprehensive general liability insurance, naming the City, as additional insureds, in the amounts of \$1,000,000.00 per occurrence and \$1,000,000.00 per person. Proof of such insurance shall be given to the Procurement Director by an appropriate certificate-of-insurance issued by applicable entity's insurance agent and the appropriate endorsement issued by the insurance carrier.

3. Vehicle liability insurance with minimum combined single limits of \$1,000,000.00 per occurrence shall also be maintained by the vendor or contractor, with applicable endorsements establishing the additional-insured status provided to the City.

4. The vendor and/or contractor shall be required to maintain, during the life of any contract with the City workers' compensation and employer's liability insurance for all employees to be engaged in services on any project in an amount not less than the minimum allowed by South Carolina law, and in case any such services are sublet, the contractor shall require the subcontractor(s) similarly to provide workers' compensation and employer's liability insurance for all of the subcontractor's employees to be engaged in such services.

Specifications

Sec. 38.40 - Purpose

Specifications are intended to assist the City in obtaining the best quality and value for funds expended. Specifications are not designed to deter, preclude, or prevent competition through the use of excessive technicalities or details.

Sec. 38.41 – Responsibility for Specifications

1. It shall be the primary responsibility of the requesting department head to furnish proper specifications. Because the responsibility for procurement rests with the Procurement Director, the Procurement Director may assist in the development of specifications jointly with the department heads as needed.

2. Prior to soliciting bids, the specifications furnished by a requesting department may be modified by the Procurement Director to comply with this Purchasing Policy and to provide for a level of quality commensurate with the intended use of the needed item. In the event the Procurement Director deems it necessary to alter the specifications from those originally

submitted, the Procurement Director will inform the requesting department head, describing the need for alteration to the specifications, and the extent and nature of the changes.

Sec. 38.42 – Types of Specifications

Each purchase, regardless of the dollar amount involved, is based on a specification. There are six basic types of specifications or methods used to describe what is to be purchased: (1) Performance: Function and use of the product are the basic definitions; (2) Design: Specific characteristics of the product and their arrangement are the basic definitions; (3) Approved Products List: Actual products have been tested or examined and approved prior to soliciting bids; (4) Questionnaire: The purchaser prepares a product information sheet to accompany the request for prices. Each bidder must complete and return the questionnaire as a part of the bid; (5) Sample: The purchaser requires vendors to furnish representative samples of products offered for comparison and evaluation in determining the successful bidder; and (6) Or Equal: One or more vendors' exact products or typical workmanship is identified as the level of quality desired, and the purchaser reserves the right to approve any other as equal or acceptable.

Sec. 38.43 – Level of Quality

In considering and developing specifications, purchases made from public sources and administered by public bodies should not be expected to provide for “deluxe” or luxurious levels of quality. Therefore, it is necessary to follow a general policy with regard to purchasing good, standard grades of merchandise which represent an optimum relationship between quality and price consistent with providing a satisfactory level of service.

Sec. 38.44 – Adequate Specifications

1. Adequacy and accuracy of specifications are very important. Specifications should not be written for the purpose of eliminating competition but should provide sufficient detail for full and fair competitive bidding.
2. In the manufacture of certain products, there is usually a price range covering similar products offered by more than one manufacturer representing a level of product quality and features offered—low, medium, and high. It is important to consider these levels in the development of specifications. For example, a lower priced, stripped automobile versus a medium-priced automobile or a higher deluxe model automobile. Each of these models has its own use and place, but without proper specifications when bid, the wrong automobile could be acquired for the use intended.

Sec. 38.45 – Change in Specifications

If it is determined, after bids have been opened, that a product with an alternate satisfactory specification provides for a lower price, all bids may be rejected at the discretion of the Procurement Director, with concurrence of the department head. The specifications should then be rewritten to allow all bidders an equal opportunity to submit proposals on an acceptable alternate.

Sec. 38.46 – Changes in Specifications by Bidder

When a decision has been reached on the specifications, all bids must be based on the same specifications and no bidder shall have the right to substitute other specifications for those contained in the bid.

Sec. 38.47 – Changes in Specifications After Bid Sent to Prospective Bidder

Once an Invitation-to-Bid has been sent, no changes in the specifications shall be made unless all prospective bidders are so notified by means of an addendum clearly noting such changes. The addendum shall instruct the bidder to acknowledge receipt of the addendum in the bid proposal.

Inventory Control Procedures

Sec. 38.50 – Maintenance of Fixed Assets Inventory List

1. The City shall maintain an inventory of its fixed assets. The fixed assets list will be maintained to: (a) safeguard the City's capital investment; (b) fix responsibility for the custody of equipment; (c) assist in formulation of acquisition and retirement policies through accumulation of data regarding prices, sources of supply, and useful life; and (d) to provide data for financial reports.

2. Fixed assets are tangible assets of significant value having a useful life that extends beyond a reasonable time period as defined by the City. The fixed assets included in the City's accounting system are land, buildings, other improvements, infrastructure, and equipment.

Sec. 38.51 – Asset Types

1. *Land:* Land includes the investment, held fee simple in real estate other than buildings and/or other improvements. All land, as defined, regardless of value or cost, should be capitalized.

2. *Buildings:* Buildings include all City-owned buildings except those whose condition prevent their serving any present or future useful purpose. Permanently installed fixtures to or within a building, such as boilers, lighting fixtures, and plumbing are considered a part of the building. The subsequent addition or minor fixtures and/or equipment to a building should be recorded as equipment. The costs of major improvements to a building, renovation of the building, etc., should be capitalized and recorded as a part of the building asset value.

3. *Other Improvements:* Other improvements are physical property of a permanent nature, including storage tanks, reservoirs, parking areas, park facilities, etc.

4. *Infrastructure:* Infrastructure assets are long-lived capital assets that normally are stationary in nature and can be preserved for a significantly greater number of years than most other capital assets. Examples are roads, bridges, water and sewer systems, drainage systems, and lighting systems.

5. *Equipment:* Equipment includes movable property of a relatively permanent nature and of significant value, such as mobile equipment, office equipment, data processing equipment, machines, tools, and office furniture and fixtures. “Relatively permanent” is defined as a useful life of one year or longer. “Significant value” is defined as having an original cost of \$5,000.00 and over. The City may exercise the option to include other items for the purpose of maintaining appropriate accounting control. The cost may be applied in some instances to aggregates of units of similar type or purpose, such as groups of chairs, shelving, filing cabinets, etc., rather than to the individual unit itself. Exceptions to the \$5,000.00 value and the one-year life rule will be applied consistently.

Sec. 38.52 – Development and Assignment of Fixed Asset Control Numbers

1. Fixed assets shall be categorized into several classification groups based on type and use of the items. These groups shall be defined and maintained on file in the City Clerk’s office.

2. Fixed assets will be assigned control numbers and will be added to the fixed asset inventory list immediately following invoice payment to ensure that a current and accurate listing is maintained. Sequentially numbered fixed asset identification tags will be prepared. Following number assignment, the tag and supporting documentation will be issued to the relevant department. The department head is responsible for ensuring that the asset tag is physically attached to the fixed asset.

3. Only equipment items will be physically tagged with fixed asset control numbers. Equipment will be tagged in a manner and location which ensures ease of number identification and permanence.

Sec. 38.53 – Review of Fixed Asset Listing

On an annual basis, department heads will be issued a copy of the fixed asset listing for their respective department(s). This asset report should be thoroughly reviewed, noting changes, additions, or deletions to be made to the inventory system. The inventory system will be revised based on information received from each department.

Appeals

Sec. 38.60 – Appeals

1. Any actual or prospective vendor, bidder, or contractor who is aggrieved in connection with the solicitation or award of a contract may formally protest in writing to the Procurement Director. The protest may be submitted at any time during the bidding process. However, if a prospective vendor, bidder, or contractor wishes to protest, the formal protest must be submitted in writing and must be received by the City no later than seven (7) days from the date that the aggrieved actual or prospective vendor, bidder, or contractor has been informed of the bid results by the Procurement Director. Protests received by the City following seven (7) days after bid results have been released by the Procurement Director will not be considered by the City.

2. The Procurement Director shall have the authority to settle and resolve a protest of a vendor, bidder, or contractor, actual or prospective, concerning the solicitation or award of a contract.
3. If the protest cannot be mutually resolved, the Procurement Director shall issue a decision in writing within a period not exceeding ten (10) days following receipt of a formal grievance notice. The decision shall state the reasons for the action taken. A copy of the decision shall be mailed to the protesting party and any intervening party immediately.
4. A decision rendered under Sec. 38.60(3) of this Section shall be final and conclusive, unless any person or party adversely affected by the decision appeals in writing to the City Council. The appeal must be submitted and must be received by the City no later than seven (7) days after the date of notification of a final decision by the Procurement Director. The appeal must outline the reasons the appellant is adversely affected by a decision and the desired outcome of the hearing. The request will be heard by Council at the next regularly scheduled City Council meeting; however, nothing herein shall prohibit the City Council from calling a special meeting to hear an appeal.
5. Any vendor, bidder, or contractor receiving an adverse decision may appeal such decision to the Court of Common Pleas, Non-Jury Term, for Oconee County, South Carolina within (10) ten days of the submission of an adverse decision by the City Council to the aggrieved party.