

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
TOWN OF ATLANTIC BEACH)

Ordinance No. 18-2025
First Reading: 11/18/2025
Second Reading: 3/2/2026

**AN ORDINANCE PURCHASING AND PROCUREMENT PROCEDURES
FOR THE TOWN OF ATLANTIC BEACH**

WHEREAS, the Town of Atlantic Beach (the “Municipality”) is a municipal corporation and political subdivision of the State of South Carolina;

WHEREAS, the Council of the Municipality (the “Council”) is the duly elected governing body of the Municipality;

WHEREAS, S.C. Code § 11-35-5320 requires that “political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement”;

WHEREAS, the Council now desires to adopt an Ordinance establishing procurement and purchasing procedures for the Municipality;

WHEREAS, the Council has determined, as a fact and after appropriate investigation, that the procedures set forth in this Ordinance are appropriately competitive;

NOW, THEREFORE, be it ordained by the Council as follows:

Article I: General Provisions

Section 1.01. Purpose. The purpose of this Ordinance (the “Ordinance”) is to establish appropriately competitive procurement procedures for the Town of Atlantic Beach, South Carolina.

Section 1.02. Application of Ordinance.

- (a) General Application. This Ordinance applies only to Procurements entered into after the effective date hereof.
- (b) Field Purchase Orders. This Ordinance does not apply to any Procurement of goods or services under \$500, or repairs under \$500, either of which may be Procured by way of a field purchase order without competitive bidding.
- (c) Real Property. This Ordinance does not apply to Procurements of real property.
- (d) Prior Ordinances. This Ordinance repeals and supersedes all prior, inconsistent ordinances and resolutions of the Municipality that established or regulated Procurement procedures.

Section 1.03. Definitions.

- (a) “Procurement” means buying, purchasing, renting, leasing from a third party, or otherwise acquiring any goods, supplies, services, equipment, or construction.

(b) "Public Procurement Unit" means any county, city, town, or any other political subdivision of the State of South Carolina (the "State"); any public agency or authority within the State; any other entity in the State that expends public funds for procurement of property, supplies, services, or construction; and the Municipal Association of South Carolina.

(c) "Responsible/Responsive Bidder" means a person or entity who (1) demonstrates the capability in all respects to perform fully the contract requirements, (2) possesses integrity and reliability that, as substantiated by past performance and reputation, will assure good faith and quality performance, and (3) submits a bid or proposal that conforms in all material aspects to the Invitation for Bids or Request for Proposals.

Section 1.04. Purchasing Authority. Municipality representatives shall have the authority to approve contracts as follows:

(a) The Town Manager shall have the authority to approve any contract subject to this Ordinance that is equal to or less than \$5,000; and make Council aware of such actions.

(b) the Town Manager shall have the authority to approve any contract subject to this Ordinance that is equal to or less than \$5,000; and make Council aware of such actions.

(c) the Council shall approve by resolution any contract subject to this Ordinance that exceeds [\$5,000];

(d) The issuance of checks shall require two authorized signatures. Expenditures resulting in a check amount greater than five thousand dollars (\$5,000) shall not be permitted without the prior approval of Town Council.

Section 1.05. Severability. If any provision or application of this Ordinance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provisions or application. To this end the provisions of this Ordinance are declared to be severable.

Section 1.06. No Personal Benefit. No employee or official of the Municipality may directly or indirectly solicit, accept, or receive any gift under circumstances in which it could be inferred that the gift was intended to or could reasonably influence a Procurement decision.

Section 1.07. Effective Date. This Ordinance shall become effective upon approval by Council.

Article II: Source Selection and Contract Formation

Section 2.01. Methods of Source Selection. Except where noted herein, all Municipality contracts shall be awarded by one of the following methods:

- (a) Invitation for Bids (Section 2.02);
- (b) Request for Proposals (Section 2.03);
- (c) Emergency Procurement (Section 2.04);

- (d) Small Purchases (Section 2.05); or
- (e) Sole Source (Section 2.06).

Section 2.02. Invitation for Bids.

(a) **Notice of Invitation for Bids.** An Invitation for Bids shall include (or state where such information is available) a purchase or project description, together with the summary contractual terms and conditions applicable to the Procurement. The Invitation for Bids shall be publicly announced. The Director shall determine in his or her discretion the appropriate method by which an Invitation for Bids is publicly announced.

(b) **Receipt and Opening of Bids.** All bids (whether sealed or not) received prior to the bid opening shall be kept secure and unopened. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The Director or his or her designee shall tabulate the name of each bidder, the amount of each bid, and such other relevant information as he or she deems appropriate. The final bid tabulation shall be made available upon request to all bidders after contract award.

(c) **Bid Evaluation and Bid Acceptance.** Bids shall be evaluated based on the requirements set forth in the Invitation for Bids and any addenda thereto. No criteria may be used in bid evaluation that is not set forth in such Invitation for Bids or addenda. Subject to the Municipality's right to reject all bids, the selected bid shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this Ordinance or by the Manager in writing. Prior to accepting or rejecting the lowest bid, the Director shall have the authority to negotiate with the low bidder for modifications of the low bid and the proposed contract, unless the Invitations for Bids specifically provides to the contrary.

(d) **Correction or Withdrawal of Bids; Cancellation of Awards.** The Director may permit, in his or her discretion, 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.

(e) **Award.** If an award is to be made, the contract shall be awarded by written notice or purchase order to the lowest Responsible/Responsive Bidder. In determining responsibility, the Director may consider:

- (i) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (ii) Whether the bidder can perform the contract or 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 by the bidder;

- (v) The previous and existing compliance by the bidder with the 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 to provide the service;
- (vii) The quality, availability, and adaptability of the supplies or contractual services to the particular use required; and
- (viii) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

(f) Right of Rejection and Resolicitation. The Director has the right, prior to award of the contract, to reject any and all bids for cause, or without cause, as he or she deems appropriate. The Municipality 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.

Section 2.03. Request for Proposals.

(a) Selection Committee. For each project in which a Request for Proposals is used, the Director or the relevant department head will establish a selection committee (the "Committee") of at least two members. The Director and the relevant department head may be members of the Committee.

(b) Notice of Request for Proposals. The Request for Proposals shall include (or state where such information is to be made available) a description of the project, enumerating all required professional services for the project. The Request for Proposals shall set forth the evaluation criteria to be used. The Request for Proposals shall be publicly announced. The Director shall determine in his or her discretion the appropriate method by which a Request for Proposals is publicly announced.

(c) Receipt and Safeguarding of Proposals. All proposals (whether or not sealed) received prior to the proposal opening shall be kept secure and unopened.

(d) Evaluation Factors. The Request for Proposals shall state the relative importance of each evaluation criterion, but need not require numerical weighting. No factors or criteria that are not included in the Request for Proposals may be used in evaluation, provided that the Request for Proposals may contain provisions allowing minor amendments to the evaluation criteria prior to award. If the Request for Proposals provides for numerical weighting of evaluation criteria, then the Municipality must adhere to such weightings. The Committee shall document the basis on which the award is made and shall make a determination of responsibility. The written documentation and determination may be included in the purchase order, or may be otherwise formalized in such method as may be determined by the Director in his or her discretion.

(e) Negotiation. The Committee will review all submissions, and may interview those responding persons deemed by the Committee to be most qualified. Following such review, the Committee shall determine the most qualified proposer, and may negotiate a contract with such proposer. In the event a satisfactory contract cannot be negotiated

with the most qualified proposer, the Committee may negotiate a contract with the next most qualified proposer, and so on, until a satisfactory contract can be negotiated. Nothing contained herein requires the Committee to negotiate a contract with an unqualified proposer or with a proposer who submits an unresponsive proposal.

(f) Right to Withdraw and Resolicit. Until award, the 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.

Section 2.04. Emergency Procurement. Notwithstanding any other provision of this Ordinance, the Manager may make or authorize others to make emergency procurements when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions, *provided* that such emergency procurements shall be made as competitively as is reasonably practicable under the circumstances. The Director shall prepare a written determination of the basis for the emergency and for the selection of the particular contractor (which determination may be included in the purchase order).

Section 2.05. Small Purchases. Any Procurement not exceeding \$500 may be made by the Town Manager to ensure appropriate competitiveness. The general procedures for small purchases shall be set forth by the Town Manager in writing, and make council aware of such.

Section 2.06. Sole Source. A contract may be awarded for goods, supplies, services, equipment, or construction without competition if the Director determines in writing (which determination may be included in the Purchase Order) that there is only one legitimate and efficacious source for the required goods, supplies, services, equipment, or construction. After determining that a sole source purchase is warranted, the Director has the authority to negotiate the price, terms, and conditions of the Procurement. Examples of a permissible, non-competitive procurement include, but are not limited to, those situations where the Director, or a requesting Department Head, has determined that the compatibility of equipment, accessories, services, systems, software, or replacement parts is of paramount importance.

Section 2.07. [Reserved].

Section 2.08. [Reserved].

Section 2.09. Bond and Security.

(a) Bid security may be required for all construction contracts entered into pursuant to an Invitation for Bids. If required, bid security shall be one or more bonds provided by one or more surety companies meeting the criteria established by the Director. If required, bid security shall be in an amount equal to at least five percent of the bid, unless a higher percentage is specified in the Invitation for Bids. Any bid that does not comply with the bid security requirements shall be rejected.

(b) When a construction contract or other contract to improve real property is awarded and the value of such contract exceeds \$50,000, the Municipality shall require the contractor to provide a performance bond and a labor and material payment bond in

the full amount of the contract. The bond must be secured by cash or must be issued by a surety company that is acceptable to the Municipality.

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

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

Section 2.10. Exempted Items.

(a) Council, upon recommendation of the Manager, may exempt by ordinance specific items, services, or projects from the purchasing procedures required in this Ordinance when Council finds that such exemption is in the interest of the Municipality and its citizens.

(b) The following services and/or Procurements shall be exempt from the provisions of this Ordinance.

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

(c) The term "Exempted Services" shall include out-of-pocket expenses and other charges billed to the Municipality 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) The Director may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of products, supplies, or services with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative procurement may include, but is not limited to, joint or multiparty contracts between Public Procurement Units.

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

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

Section 2.11. Repeat Orders. The Director may approve the purchase of additional goods or services pursuant to a Procurement for up to one year following the award, provided that the per unit price of such goods or services may not exceed the per unit price specified in the original award.

Article III: Contract Administration; Resolving Protests

Section 3.01. Multi-Year Contracts. To the extent permitted by law, a contract for supplies or services may be entered into for a period of time not to exceed a total of 5 years, *provided* that (a) the terms of the contract and the conditions of renewal or extension (if any) are included in the solicitation and (b) pricing increases for succeeding fiscal periods (if any) shall not exceed ten percent (10%) of the preceding year's contract price.

Section 3.02. 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 Director. The protest, setting forth the grievance and the grounds therefore, 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 more than fifteen calendar days after notification of award of the contract.

Section 3.03. Authority to Resolve Protests. The Director shall have the authority to settle and resolve a protest of an aggrieved bidder, proposer, or contractor 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, which shall be concluded within ten calendar days of the notice of protest.

Section 3.04. Decision. Should the parties fail to resolve the protest in mediation, the Director shall promptly issue a decision in writing, stating the reasons for the action taken. A decision of the 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.

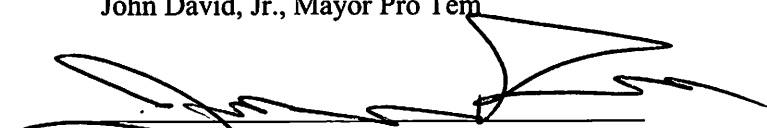
Article IV: Debarment.

Section 4.01. The offer of cash, merchandise, or any other thing of value to a Municipality official or employee by any vendor or contractor, or prospective vendor or contractor, may be reason for declaring such individual or firm to be an irresponsible bidder and for debarring such individual or firm from participation in the Municipality's procurement process for a period of not less than two years.

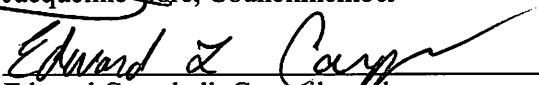
Atlantic Beach Town Council

Jake Evans, Mayor

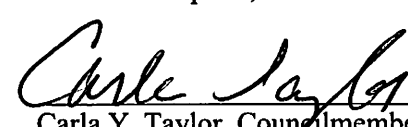
John David, Jr., Mayor Pro Tem



Jacqueline Gore, Councilmember




Edward Campbell, Councilmember



Carla Y. Taylor, Councilmember

Attest:



Town Clerk



Town Manager

OPTIONAL PROVISIONS

1. Design-Build Procurement

- *Add definition: "Design-Build Services"* means a method of construction or construction contract management in which a single entity (or group of associated entities) provides to the Municipality all or substantially all of the services necessary to both design and construct a project.
- *Add to Section 2.01, Methods of Source Selection: (f) Design-Build Services (Section 2.07).*
- *Insert in Section 2.07, reserved: Section 2.07. Design-Build Services.* The Municipality may use Design-Build Services as an alternative Procurement method in appropriate circumstances. The Director may determine in his or her discretion the appropriate procedure to award a contract for Design-Build Services. Prior to the Municipality's entering an arrangement for Design-Build Services, the Council must approve the use of such Design-Build Services and the procedure to be used, and should state in open session the justification for using such method of Procurement.

2. Local Preference.

- **Add to Section 2.02(e) the following section (ix):**

(ix) In addition, the Director may allow the lowest local bidder (defined as a bidder maintaining a place of business physically located and operating within the limits of Horry County (the "County"), whose bid is within [PERCENTAGE%] of the lowest non-local bidder, to match the bid submitted by the non-local bidder and thereby be awarded the contract, if:

The total purchase price is [\$AMOUNT] or more;

The local bidder has a valid business license issued by the County or one of the municipalities within the County, which business license was issued at least twelve months prior to bid opening date; and

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

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

In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, the contract shall be awarded to the local bidder. If two or more of such bids are submitted by local bidders, the Director shall award the contract to one of the local tie bidders by drawing lots in public. If local bidders are not involved in the tie bids, the Director shall award the contract to one of the outside tie bidders by drawing lots in public.

3. Prequalification.

- *Add to Section 2.08 the following:*

Section 2.08. Prequalification of Bidders.

(a) The Director may prequalify all prospective bidders or proposers.

(b) 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 of prospective bidders shall be determined. Only those criteria set forth in the prequalification notice may be considered in prequalifying bidders. The Director shall make prequalification decisions in the exercise of his or her reasonable discretion, and shall make a written determination of the bases for the prequalification decision (which determination may be included in the Purchase Order). Prior to issuance of an Invitation for Bids or Request for Proposals, all prospective bidders or proposers that were provided with prequalification notices will be notified of the Director's decisions relating to prequalification.