

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE OF TWO PARTS.

PART ONE: TO REPEAL IN ITS ENTIRETY
DIVISION 2, PURCHASING IN CHAPTER 2,
ADMINISTRATION, ARTICLE VI FINANCE.

PART TWO: TO ENACT CHAPTER 2,
ADMINISTRATION, ARTICLE VI FINANCE,
DIVISION 2, PURCHASING TO ADJUST LIMITS
FOR REQUIRING FORMAL PROCUREMENT
SOLICITATION AND CONTRACT PROCEDURES;
TO CLARIFY THE COMPETITIVE BIDDING
REQUIREMENT; TO AMEND THE LOCAL
PREFERENCE SUB-SECTION TO COMPORT WITH
THESE AMENDMENTS; AND TO ADD
PROCEDURES FOR FILING AND RESOLVING
DISPUTES AND PROTESTS.

PART ONE:

It is ordained that DIVISION 2, PURCHASING of CHAPTER 2, ADMINISTRATION, ARTICLE VI
FINANCE is repealed in its entirety.

PART TWO:

WHEREAS, Section 2-241 of the Code of Ordinances of the City of Myrtle Beach
establishes the office of purchasing agent and outlines the specific duties assigned
thereto; and,

WHEREAS, item 6 of Section 2-241 makes the purchasing agent responsible for
“obtaining as full and open competition as possible on all purchases, contracts and
sales”; and,

WHEREAS, developing technologies have made available new and sometimes more
effective methods of serving public notice, requesting and receiving proposals,
conducting auctions and serving other functions of the purchasing agent; and

WHEREAS, it is desirable to make provision for the City to take full advantage of such
technologies where they offer improvements in productivity or effectiveness without
compromising the objectives of the purchasing code as stated in Sec. 2-241;

NOW THEREFORE, the City Council of the City of Myrtle Beach, in Council duly
assembled, hereby amends Chapter 2, Article VI, to read in its entirety as follows:

Sec. 2-241. - Purchasing agent; specified duties.
The city manager, or an officer of the city designated by the city manager, shall be the
purchasing agent for the city. He shall be responsible for:

(1) The purchase of supplies, materials and equipment and contractual services required by any office, department or agency of the city government.

(2) Ensuring that vendors or contractors working on City property have appropriate insurance and business licenses, as required by the City.

(3) The storage and distribution of all supplies, materials and equipment required by any office, department or agency of the city government.

(4) Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any office, department or agency of the city government. Such specifications shall be definite and certain and shall permit competition.

(5) Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in store rooms or warehouses.

(6) Soliciting and maintaining an up-to-date list of qualified suppliers who have requested their names to be added to a "bidders list." The purchasing agent shall have authority to remove temporarily the names of vendors who have defaulted on their quotations, attempted to defraud the city or who have failed to meet established specifications or delivery dates.

(7) Obtaining as full and open competition as possible on all purchases, contracts and sales.

Sec. 2-242. - Competitive processes required.

(1) Before any purchases or contracts for supplies, materials, equipment or services are made, the purchasing agent shall give ample opportunity for competitive bids or proposals. If any of the low bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to the local bidder. If two or more of such bids are submitted by local bidders, the purchasing agent shall award the contract to one of the local tie bidders by drawing lots in public. If local bidders are not involved in the tie bids, the purchasing agent shall award the contract to one of the outside tie bidders by drawing lots in public.

(2) No contract or purchase shall be subdivided with the effect of avoiding the requirements of this section.

(3) However, in the event of an emergency affecting the public welfare, health or safety, neither the provisions of this section nor those of Section 2-243 shall apply. An "emergency" is a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to property, and/or interference with normal activities and which, therefore, requires immediate attention and remedial action. The purchasing agent shall file a full report of the circumstances of an emergency purchase to be kept on file for a period of seven years.

Sec. 2-243. - Requirements for written vs. oral procedures to ensure competition.

(1) Written procedures required for certain purchases and sales.

(a) All supplies, equipment, and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$25,000.00 shall

be purchased by formal, written contract from the lowest responsible bidder or proponent, after due notice inviting bids or proposals.

(b) All sales of personal property that has become obsolete or unusable, when the estimated value shall exceed \$5,000.00, shall be sold by formal written contract or at a public auction to the highest responsible bidder, after due notice inviting proposals or bids.

(2) Oral procedures permitted for purchases in amounts not exceeding \$25,000.

All supplies, equipment, and contractual services, except as otherwise provided herein, when the estimated cost thereof shall not exceed \$25,000.00, may be purchased on the basis of requests for oral quotes from no fewer than three vendors.

(3) Limited Purchase Orders ("LPO").

A Limited Purchase Order (an "LPO") is a mechanism by which departments of City government may purchase supplies, equipment, and contractual services of a value not exceeding \$7,500. The purchasing agent may allow directors of city departments to authorize purchases to be made by LPO, in which case the director of the appropriate department shall act in the capacity of the purchasing agent and, in so acting, shall be responsible for all duties ascribed to the purchasing agent by this code. Limited Purchase Orders may not be used in order to contravene the Sec. 2-242 objectives of observing competitive processes or of prohibitions against subdividing a purchase. The use of an LPO for the purpose of making an emergency purchase shall not relieve the user of the responsibility to document and retain documentation regarding the emergency purchase per the provisions of Section 2-242(3).

Sec. 2-244. - Award to lowest bidder; advertising, when required.

(1) All contracts for city improvements, materials, equipment or services to be purchased, or for equipment to be disposed of, under Sec. 2-243(1) shall be purchased by competitive sealed bid or proposal and shall be awarded to the lowest responsible bidder, subject to the provisions of section 2-255, after public notice by means generally accessible in the city at least five working days before the last day set for receipt of proposals; provided, however, that in case of professional services, this section shall not apply. The notice required herein shall include a general description of the articles or services to be purchased or sold, shall state where the necessary bid or proposal documents and specifications may be secured, and the time and place for opening responses. For purchasing conducted under Sec. 2-243(1)(a), the notice shall include, at minimum, publication in a newspaper of general circulation in the city.

(2) When selling City property under Sec. 2-243(1)(b), nothing in this section shall prevent the purchasing agent's contracting with outside agents for the purpose of serving public notice, listing items to be sold, conducting auctions and providing other services to the City as a listing and sales agent.

Sec. 2-245. - Bid deposits.

When deemed necessary by the purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Upon entering into a contract, bidders shall be entitled to return of bid deposit where the purchasing agent has required such. A successful bidder shall forfeit any bid deposit required by the purchasing agent upon failure on his part to

enter into a contract within ten days after the award; provided, however, that the city, in its uncontrolled discretion, may waive this forfeiture.

Sec. 2-246. - Sealed bid procedures.

Procedure for sealed bids shall be as follows:

(1) Sealing. Bids shall be submitted to the purchasing agent securely sealed in an envelope, and shall be identified on the envelope in accordance with bid instructions.

(2) Opening. Bids shall be opened in public at the time and place stated in the public notices.

(3) Tabulation. A tabulation of all bids received shall be available for public inspection.

(4) Rejection of bids. The purchasing agent shall have the authority to reject all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract.

(5) Bidders in default to city. The purchasing agent shall not accept the bid of a vendor or contractor who is delinquent in the payment of taxes, license or other monies due the city.

(6) Award of contract.

a. Authority in agent. The purchasing agent shall have the authority to award contracts within the purview of this article; provided, however, that contracts in excess of \$1,000.00 shall not be awarded without prior approval of the city manager. Written purchase orders shall not fall under this requirement.

b. Lowest responsible bidder. Subject to section 2-255, contracts shall be awarded to the "lowest responsible bidder". In addition to price, the purchasing agent shall consider:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
2. Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
7. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
9. The number and scope of conditions attached to the bid.

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

(8) Tie bids. If any of the low bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to the local bidder. If two or more of such bids are submitted by local bidders, the purchasing agent shall award the contract to one of the local tie bidders by drawing lots in public. If local bidders are not involved in the tie bids, the purchasing agent shall award the contract to one of the outside tie bidders by drawing lots in public.

(9) Performance bonds. The purchasing agent shall have the authority to require a performance bond, before entering into a contract, in such form and amount as he shall find reasonably necessary to protect the best interests of the city.

(10) Payment bond/labor and material bond. The purchasing agent may require a payment bond and a labor and material bond, before entering into a contract, in such form and amount as he or she shall deem necessary to protect the best interest of the city.

Sec. 2-247. - Materials testing.

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

Sec. 2-248. - Financial interest of city officials and employees prohibited.

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

Sec. 2-249. - Records of open market orders and bids.

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

Sec. 2-250. - Stock—Obsolete and Surplus, Reporting and Disposition.

(1) Obsolete stock reports.

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

(2) Surplus stock.

The purchasing agent shall have authority to transfer surplus stock to other offices, departments or agencies of the city government.

(3) Supplies unsuitable for public use, sale or exchange.

The purchasing agent with the approval of the city manager shall have the authority to sell all supplies which have become unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies. Such sales shall be made to the highest bidder, and in conformance with section 2-242. All monies received from such sales shall be paid into the appropriate fund of the city.

Sec. 2-251. - Standards of conduct.

In all actions involving the procurement of supplies, services, or construction for the city, the provisions of the State Ethics Act shall be complied with in full.

Sec. 2-252. - Cooperative purchasing.

The purchasing agent shall have authority to join with other units of government in cooperative purchasing plans when the best interests of the city would be served thereby; provided, that the purchasing agent of the city is given the authority to make purchases of supplies and equipment through the property division of the state budget and control board, without the formality of publication and receiving competitive bids.

Sec. 2-253. - Local preferences.

Whenever the purchasing agent purchases services, supplies, materials, and/or equipment for the city through the use of competitive process, including quotes, bids and proposals, a percentage preference shall be used for evaluation purposes, according to the categories as set forth herein. When bid submissions are evaluated, a percentage from the local preference classification shall be deducted from the total dollar amount bid by local vendors on competitive quotes and bids, and from the total evaluated aggregate score obtained by local vendors on proposals. The total amount of local preference granted in a single bid shall not exceed as set forth herein over a non-local vendor. The award shall be made at the full price of the quote, bid or proposal. In the case of an absolute tie, an award will be made to the local vendor. In the case of a tie between local vendors, the award will be determined by lot.

Bid Amount	Within City Limits	Within Horry County	Within North Eastern Strategic Alliance (NESA) Area
From \$7,500.01 to \$25,000.00	5% of Bid	4% of Bid	3% of Bid
\$25,000.01 and up	\$500.00 plus 4% of amount above \$25,000.00 with the maximum being \$2,000.00, including the \$500.00	\$400.00 plus 3% of amount above \$25,000.00, with the maximum being \$1,800.00, including the \$400.00	\$300.00 plus 2% of amount above \$25,000.00, with the maximum being \$1,600.00, including the \$300.00

1 (1) When requesting any level of local preference, the vendor shall submit to the
2 purchasing division sufficient evidence that such business has had a business license in
3 the City of Myrtle Beach for a period exceeding 90 days before the request for bid
4 proposal is made public.

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6 (2) The local vendor preference does not apply to bids conducted jointly with other
7 public agencies, nor when prohibited by state or federal statutes or regulations that
8 require award to the lowest responsible bidder, or otherwise exempted from local
9 preferences

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11 (3) To qualify for the local vendor preference, the vendor must meet all of the
12 following requirements:

13 a. The vendor must complete the application process as determined by the
14 manager and affirm their qualifications.

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16 b. The vendor must have maintained a physical address and office as a principal
17 place of business within the defined boundaries of the category sought for at
18 least one year, and during that time have had a majority of full-time employees,
19 chief officers and managers regularly conducting work and business from this
20 office; and

21
22 c. The vendor must submit a copy of their local vendor preference certificate
23 with their bid.

24
25 (4) An eligible business shall maintain such status throughout the term of any contract
26 with the city. Failure to maintain such status or to keep current on all fees and taxes to
27 the city shall be grounds to terminate the contract.

28
29 **Sec. 2-254. - Dispute or Protest**

30 Whenever an Interested Party, as defined herein, shall disagree for a valid reason with
31 any award made by the City through its Purchasing Agent, such Interested Party may
32 seek consideration and resolution of any such dispute by following the procedures
33 provided for in this section.

34
35 **Definitions**

36 "Dispute"—disagreement of an Interested Party with a decision or an award made
37 with respect to a request for proposals or bids.

38
39 "Informal Dispute Resolution"—a process by which an Interested Party registers
40 a verbal or written complaint or concern with the purchasing agent or his or her
41 designee.

42
43 "Interested Party"—a respondent to or a prospective awardee of a contract or
44 agreement pursuant to a request for proposals or bids.

45
46 "Exclusive Rights and Remedies"—The rights and remedies set forth in this
47 article, which rights and remedies are provided so that Interested Parties may
48 address alleged grievances with the City of Myrtle Beach to the exclusion of all
49 other rights and remedies.

1 “Protest”—a written objection in connection with any of the items listed in Sec.
2 2-255 below, filed by an Interested Party to the City of Myrtle Beach, and
3 normally made following the failure to resolve an issue or concern by informal
4 procedures.

5
6 Sec. 2-255. Procedures for Documenting, Hearing and Resolving Disputes and Protests

7 (1) Informal Dispute Resolution

8 An Interested Party who has a concern with a decision made by the Purchasing
9 Agent or the designee, shall inform the Purchasing Agent, or the designee, within
10 five (5) calendar days after the date the City posts a bid tab on the City’s website
11 stating its intention to make a Contract Award, or the Contract is Awarded,
12 whichever occurs first, unless the Solicitation Document specified a shorter
13 period of time. The Purchasing Agent or the designee shall discuss the issue(s)
14 with the Interested Party in an attempt to resolve the dispute.

15
16 (2) Formal Protest Procedure

17 An Interested Party who has a dispute that cannot be resolved by informal efforts
18 under Sec. 2-255(1) may file a written protest with the City of Myrtle Beach in
19 connection with any of the following:

20 a. A solicitation or other request by the City of Myrtle Beach for a
21 contract or agreement for the acquisition of materials, supplies, equipment, and
22 services; or

23 b. An award of a contract or agreement for the acquisition of
24 materials, supplies, equipment, and services; or

25 c. A termination or cancellation of the award of a contract or
26 agreement for the acquisition of materials, supplies, equipment, and services if
27 the objection is based, in whole or in part, on the allegation that the award of
28 the contract or agreement was improper. A formal protest may be filed in the
29 following manner:

30 1. A Protest must be submitted in writing, filed by an Interested
31 Party, and addressed to the Purchasing Agent or the designee.

32 2. The Protest must be signed by an authorized agent or
33 representative of the Interested Party.

34 3. An administrative fee shall be submitted with the written
35 protest and shall be made in the form of a certified check or
36 money order made payable to the City of Myrtle Beach. The
37 administrative fee will be calculated as follows:

38 a. Five percent (5%) of the Protestor’s bid or proposal; or

39 b. In the case where the Protestor did not submit a bid or
40 proposal, five percent (5%) of the lowest responsive
41 and responsible bid or proposal received by the City.

42 c. Administrative fee shall be returned to the Protestor if
43 the Protest is upheld; otherwise the fee is non-
44 refundable.

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46 4. Within five (5) calendar days of discussing the dispute with the
47 Purchasing Agent or the designee, the written protest and
48 administrative fee must be received by the Purchasing Agent
49 or the designee. A Protest received after the time period
50 defined above will not be considered.

1 5. Form of the Formal Protest The written Protest shall include
2 the following:

- 3 a. the name and address to which certified mail shall be
4 received on behalf of the Protester;
- 5 b. An appropriate identification of the solicitation, and,
6 if a contract has been awarded, the contract number;
- 7 c. A complete statement of the reasons for the Protest;
- 8 d. Exhibits, documents, or other evidence in support of
9 the reasons for the Protest;
- 10 e. A request for a remedy sought by the Protester;

11
12 6. Notification to Other Parties - Upon receipt of the Protest, the
13 Purchasing Agent or designee shall promptly notify the
14 following other parties of the filing of the Protest:

- 15 a. City Attorney, who shall be provided with a copy of
16 the Protest;
- 17 b. Director of Financial Services;
- 18 c. All other representatives of city departments
19 associated with the solicitation.

20
21 **Sec. 2-256. Stay of the Procurement**

- 22 (1) When a Protest has been timely filed before the award of a contract or
23 agreement, the contract or agreement shall not be awarded, unless the
24 Purchasing Agent or the designee, determines that the award of the contract or
25 agreement during the pendency of Protest is necessary to protect substantial
26 interests of the city.
- 27 (2) When a Protest has been timely filed after the award of a contract or agreement,
28 the Purchasing Agent or the designee, shall direct the contractor not to engage
29 in any further performance of the contract or agreement, unless the Purchasing
30 Agent or the designee, determines that performance under the contract or
31 agreement during the pendency of Protest is necessary to protect substantial
32 interests of the City.
- 33 (3) Making Information on Protests Available - The Purchasing Agent or the designee,
34 shall upon written request make available to any other party information
35 submitted that bears on the substance of the Protest, except where information
36 is proprietary, confidential, or otherwise permitted or required to be withheld
37 from disclosure by law or regulation. Persons or other entities that are involved
38 in the Protest that want to keep information submitted by them confidential
39 should request that the information not be disclosed by specifically identifying
40 the confidential information within the documents submitted, and indicating on
41 the front page of each document that it contains confidential information.

1 Sec. 2-257. Post Filing Formal Protest Process

2 (1) Once a Protest has been filed in accordance with the provisions of this article,
3 the Purchasing Agent or the designee may, in the sole discretion of the
4 Purchasing Agent or the designee:

- 5 a. Hold a conference between all parties to the Protest in which
6 resolution options are explored; and/or
7 b. Conduct an investigation of the merits of the Protest allegations;
8 and/or

9 (2) Order the parties to the Protest to engage in certain methods of discovery and
10 set limits in terms of discovery scope and time; and/or

- 11 a. Schedule and conduct a Protest hearing; and
12 b. Render a decision on the merits of the Protest after engaging in
13 some or none of the previously listed activities.
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15 Sec. 2-258. Formal Protest Decision

16 (1) A decision on a Protest shall be made by the Purchasing Agent or the designee as
17 expeditiously as possible, but not later than ten (10) work days after receiving
18 the Protest. In determining a Protest, the Purchasing Agent or the designee may
19 determine to:

- 20 a. Terminate the contract or agreement; or
21 b. Issue a new solicitation or other request for a contract or
22 agreement; or
23 c. Award a contract or agreement.

24 (2) The Protest decision shall be mailed to the Protester by certified mail, return
25 receipt requested.

26 (3) To the extent permitted by law or court rules regarding appeals, an appeal of
27 the decision regarding the protest may be made to a court of competent
28 jurisdiction within the time set forth in the Rules.
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31 Sec. 2-259. - Reserved.
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34 This ordinance shall be effective upon second reading.
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MICHAEL CHESTNUT, MAYOR PRO-TEM

ATTEST:

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JENNIFER STANFORD, INTERIM CITY CLERK

1ST READING: JULY 10, 2018

2ND READING: JULY 24, 2018