

AGENDA
TOWN OF EDISTO BEACH
September 12, 2019
REGULAR TOWN COUNCIL MEETING
6:00 P.M.

- I. **Call to Order**
- II. **Pledge of Allegiance and Invocation**
- III. **Approval of Minutes**
 - A. Regular Meeting Minutes, August 8, 2019
 - B. Emergency Council Meeting Minutes, September 2, 2019
- IV. **Proclamations and Presentations**
 - A. Starfish Awards –
 - 1. Tommy Sandel and Jay Watts
 - 2. Councilman Jerome Kizer
 - B. Representative from Republic – Collection Issues
 - C. Edisto Beach Annual Beach & Inshore Survey 2018 Monitoring Report and Preliminary Damage Report
- V. **New Business**
 - A. First Reading of Ordinance 2019-15 to Amend Section 2-142 of the Town’s Code of Ordinances, Town Administrator Duties
 - B. First Reading of Ordinance No. 2019-18 To Amend Section 86-33 (4)(b)(3) to Replace “Newsletter” With “Website”
 - C. Special Event Application, Edisto Watersports & Tackle, Edisto Watersports Redfish Tournament
 - D. Recurring Special Event Form, Edisto Chamber of Commerce, 2019 Fall Festival
 - E. Award of RFP 2019-04 Edisto Beach Civic Center Stainless Steel Cable Repair/Replace
 - F. Award of RFP 2019-05 Asphalt-Yacht Club Road
 - G. Recreation Master Plan Funding-\$11,875
 - H. First Reading of Ordinance 2019-16 To Amend and Completely Restate Division 2 of Article IV of Chapter 2 Entitled “Purchasing” of The Town’s Code of Ordinances
 - I. First Reading of Ordinance 2019-17 to Amend Article IV of Chapter 2 of the Town’s Code of Ordinances to Enact Division 3 Entitled “Ethics In Public Contracting”
 - J. Water Improvement Project- Dominion Energy Power to Wells and Plant-\$11,739
 - K. Convenience Station Rehabilitation-\$25,000
 - L. Emergency Work - \$21,000
 - M. Ocean Ridge Storm Debris
- VI. **Committee Vacancies**
 - A. Municipal Elections Commission
 - B. Water and Sewer Committee – 1 vacancy
- VII. **Departmental Reports and Committee Updates**
- VIII. **Public Comment**
- IX. **Executive Session**
 - A. Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of the Town Administrator in the Administration Department. S. C. Code §30-4-70(a)(2)
- X. **Adjournment**

TOWN OF EDISTO BEACH

AN ORDINANCE

TO AMEND SECTION 2-142 OF THE TOWN'S CODE OF ORDINANCES

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, South Carolina, in council duly assembled that Section 2-142 of the Town's Code of Ordinances is amended and restated to read as follows:

Sec. 2-142. Duties.

- (a) It shall be the duty of the administrator to direct and supervise the administration of all departments, offices and agencies of the town.
- (b) The administrator shall act to ensure that all laws and ordinances of the council, subject to enforcement by him/her or by officers subject to his/her direction and supervision, are faithfully executed.
- (c) He/She shall prepare and submit the annual budget to the council.
- (d) It shall be his/her duty to submit to the council a complete report on the finances and administrative activities of the town as needed.
- (e) He/She shall make such other reports as the council may require concerning the operations of town departments, offices and agencies subject to his/her direction and supervision.
- (f) He/She shall recommend to the council municipal employee appointments and, when he/she deems it necessary for the good of the town, recommend suspension or removal of any town employee or appointive commission or committee member.
- (g) It shall be his/her duty to have typewritten in separate form for ratification all ordinances passed, shall furnish the several officers of the town and all other persons as he/she shall be directed by the council with copies of all resolutions and ordinances or information as may be necessary for their guidance. He/She shall attend all meetings of the council, have minutes recorded, and receive and deliver all petitions, memorials, information or applications that may be made to the council.
- (h)
- (i) He/She shall act as treasurer of the town, and in connection therewith, he/she shall carry out the following duties:
 - (1) He/She shall deposit or invest in such bank or investment or savings institutions as the council shall direct all money received by him/her in his/her official capacity, immediately after the same has been received.
 - (2) It shall be his/her duty to ensure journals, ledgers and receipt books are kept wherein he/she shall enter an account of all money received or disbursed by him/her in the execution of his/her office, for the town, which shall be public record.
 - (3) He/She shall have the custody of all securities and such other documents as the ways and means committee of the council shall direct.
 - (4) He/She shall be charged with the collection of all money owing the town, and shall have the same powers in respect to the collection of delinquent town taxes as are given under the laws of the state and county.

- (5) It shall be his/her duty, in each year, to verify the returns made to his/her office with the returns made to the county treasurer for real and personal taxation, and to keep a full and complete record of the same, setting forth the location, value and descriptions of all lands and buildings liable to taxation.
- (6) He/she shall perform such other duties as are designated by the council.

This ordinance shall take effect upon final reading.

Jane S. Darby, Mayor

First Reading: _____

ATTEST:

Final Reading: _____

Deborah Hargis, Municipal Clerk

Approved as to form: _____

V.B.

No. 2019-18

TOWN OF EDISTO BEACH

AN ORDINANCE

TO AMEND SECTION 86-33 OF THE TOWN'S CODE OF ORDINANCES

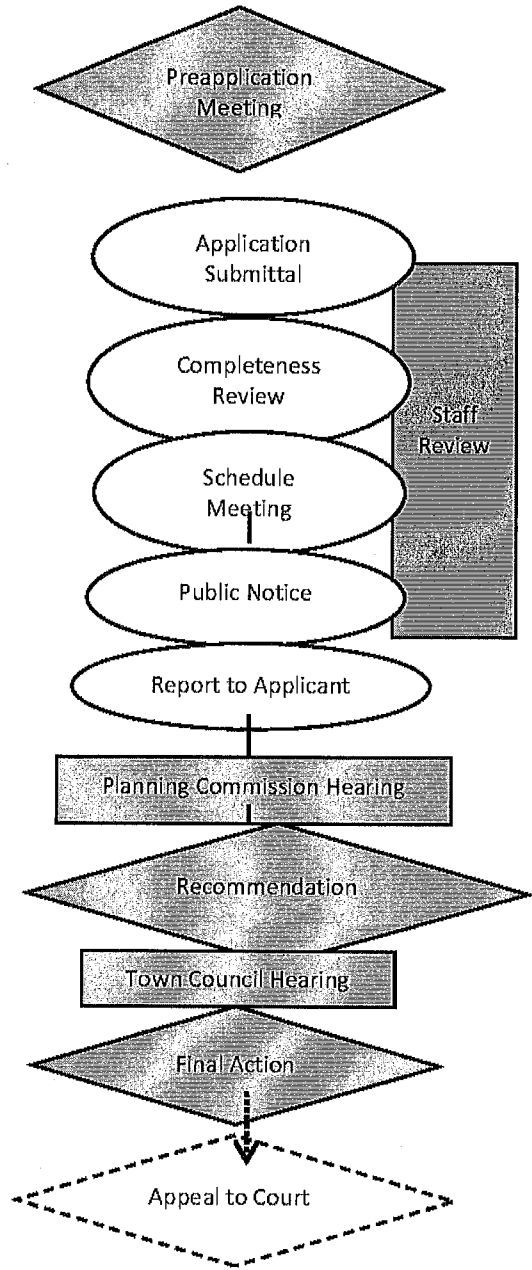
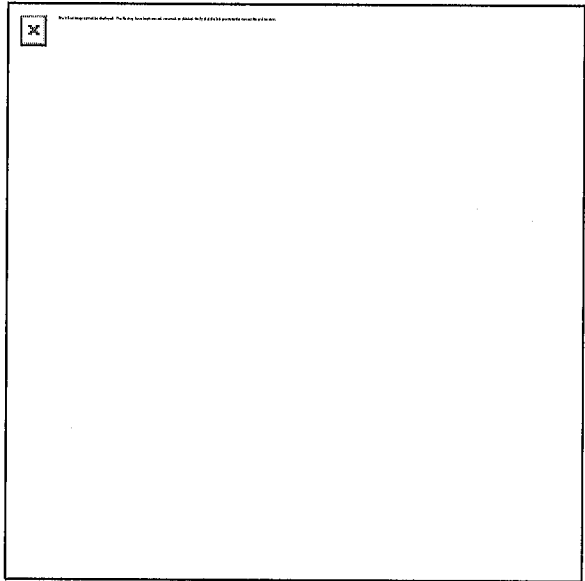
NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, South Carolina, in council duly assembled that Section 86-33 of the Town's Code of Ordinances is amended and restated to read as follows:

Sec. 86-33. - Procedure for amendments.

Requests to amend this chapter shall be processed in accordance with the following requirements:

- (1) *Initiation of amendments.* A proposed amendment to this chapter may be initiated by the town council, the planning commission or by application filed with the building code administrator by the owners of the property proposed to be changed, provided, however, that action shall not be initiated for a zoning amendment affecting the same parcel or parcels of property or any part thereof, and requesting the same change in district classification by a property owner or owners of more often than once every 12 months.
- (2) *Application procedure.* Application forms for amendment requests shall be obtained from the building code administrator. The application form shall, in addition to other pertinent information, require the applicant to state in detail the nature of his or her interest in the property sought to be rezoned. Completed forms, together with an application fee to cover administrative costs; plus any additional information the applicant feels to be pertinent, will be filed with the building code administrator. Any communication purporting to be an application for an amendment shall be regarded as a mere notice to seek relief until it is made in the form required. Application for amendments must be submitted in proper form at least two weeks prior to a planning commission meeting in order to be heard at that meeting. Application fees shall be forwarded by the building code administrator to the mayor, who shall supervise the application of same to the costs of advertising and other administrative expenses.
- (3) *Hearing by the planning commission.*
 - a. All papers and other data submitted by the applicant on behalf of the amendment request shall be transmitted to the planning commission.
 - b. The planning commission, at regular meetings, shall review and prepare a report, including its recommendation, for transmittal to the town council.
 - c. All meetings of the planning commission shall be open to the public. At a meeting, any party may appear in person, or by agent, or by an attorney.
 - d. No member of the planning commission shall participate in a matter in which he has any pecuniary or special interest.
 - e. Following action by the planning commission, all papers and data pertinent to the application shall be transmitted to the town council for final action.
- (4) *Public hearing by town council.*
 - a. Before enacting an amendment to this chapter, the town council shall hold a public hearing thereon. Notice of the time and place of the public hearing shall be given by publication in a newspaper of general circulation in the town at least 15 days before the date of the hearing.

- b. In addition, if the proposed amendment is an amendment in the zoning district boundaries depicted on the official zoning map, notice of the time and place of the public hearing shall be given as follows:
1. Each lot or tract to which the proposed rezoning ordinance applies shall be posted with a notice of the proposed change and the date, time and place of the public hearing. The notice shall be on a form approved by the building inspector and shall be no smaller than 8½ inches by 11 inches, shall be properly shielded from the natural elements and shall be posted on the premises at such place as shall gain the maximum exposure to the public;
 2. Each owner of a lot or tract falling within the block or blocks on which any change in the zoning map is proposed and each owner of a lot or tract in any block which is separated from the block or blocks in which the change is proposed by a road or a road right-of-way shall be given notice of the date, time and place of the public hearing. For purpose of this provision, notice shall be deemed given when the town administrator has deposited a copy of such notice in the United States mail, postage paid, and addressed to the owner at the address which is the most current address in the records of the town; and
 3. The town administrator shall give notice of the proposed action, and the date, time and place of the public hearing in the town's **website** published next ensuring the date of hearing.
- (5) *Changes in the zoning map.* Following final action by the town council, any necessary changes shall be made in the zoning map by the town administrator or his/her designee. A written record of the type and date of such change shall be maintained by the town administrator or his/her designee.



This ordinance shall take effect upon final reading.

Jane S. Darby, Mayor

First Reading: _____

Public Hearing: _____

Final Reading: _____

Approved as to form: _____

ATTEST:

Deborah Hargis, Municipal Clerk

V. H.

No. 2019- 16

TOWN OF EDISTO BEACH

AN ORDINANCE

TO AMEND AND COMPLETELY RESTATE DIVISION 2 OF ARTICLE IV OF CHAPTER 2 ENTITLED "PURCHASING" OF THE TOWN'S CODE OF ORDINANCES

WHEREAS, the Town Council desires to adopt a purchasing policy that provides for more detailed procedures related to procurement of goods and services, the disposition of surplus property, and the sale and purchase of real property.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, South Carolina, in council duly assembled that DIVISION 2 Article IV of Chapter 2 of the Town's Code of Ordinances is amended and restated to read as follows:

Sec. 2-201. - Purchasing agent, specified duties.

The administrator or an officer of the town designated by the administrator shall be the purchasing agent for the town. She/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 town government made in compliance with the provisions of this Division.
- (2) The storage and distribution of all supplies, materials and equipment required by any office, department or agency of the town government.
- (3) Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any office, department or agency of the town government. Such specifications shall be definite and certain and shall permit competition.
- (4) Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in storerooms or warehouses.
- (5) Soliciting and maintaining an up-to-date list of qualified suppliers who have requested that their names 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 town, or who have failed to meet established specifications or delivery dates.
- (6) Obtaining as full and open competition as possible on all purchases, contracts and sales through compliance with the provisions of this Division.

2-202. - Standards of conduct.

No employee, council member, or agent of the TOWN OF EDISTO BEACH shall participate in vendor selection or in the award or administration of a purchase supported by town funds if a conflict of interest would be involved. Such a conflict would arise when:

- A. An employee, council member, or agent;
- B. Any member of his or her family;
- C. His or her partner; or
- D. An organization which employs or is about to employ any of the above;

has a financial or other interest in the vendor selected for the purchase. This policy does not prohibit the award to these parties, but prohibits the participation in the selection process or in administration of purchases where there would be a conflict of interest.

In accordance with the State Ethics Code, S.C. Code 1976, §§ 8-13-10 through 8-13-1020, which governs local government, no employee, council member, or agents of the TOWN OF EDISTO BEACH are allowed to solicit or accept personal gratuities, favors, or anything of monetary value from contractors/suppliers, potential contractor/suppliers, or parties to sub-agreements.

Violation of these standards of conduct by an employee can lead to discipline up to and including termination of employment.

Every contract or duty within this Division imposes an obligation of good faith in its negotiation, performance, or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

2-203. - Determinations.

Written determinations and findings required by this Division shall be retained in an official contract file maintained by the town administrator or his or her designee, who is responsible for the safekeeping of town contracts. Such determinations shall be documented in sufficient detail to satisfy audit and retention requirements as provided for in section 2-209.

2-204. - Definitions.

The following words, unless the context clearly indicates otherwise, shall mean:

Agent means an individual who represents and acts for the TOWN OF EDISTO BEACH under a contract.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.

Certificate of liability insurance means a form that shows the contractor's insurer, coverage, and expiration date of coverage with the Town of Edisto Beach listed as policy holder. If this form is not provided prior to work being performed, contractors are required to sign a release from waiver form.

Change order means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

Construction means the process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

Contract means all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, information technology, or construction.

Contract modification means a written order signed by the TOWN OF EDISTO BEACH, directing the contractor to make changes in which the changes clause of the contract authorizes the TOWN OF EDISTO BEACH to order without the consent of the contractor.

Contractor means any person having a contract, as defined in this section, with the TOWN OF EDISTO BEACH.

Cost effectiveness means the ability of a particular product or service to efficiently provide goods or services to the TOWN OF EDISTO BEACH. In determining the cost effectiveness of a particular product or service, the TOWN OF EDISTO BEACH shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

Cost-reimbursement contract means a contract under which a contractor is reimbursed for costs, which are allowable and allocable in accordance with the cost principles as determined by the TOWN OF EDISTO BEACH.

Data means recorded information, regardless of form or characteristics.

Days means calendar days. In computing any period of time prescribed by this policy or the ensuing regulations, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the town, then the period shall run to the end of the next business day.

Debarment means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the town, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

Employee means an individual drawing a salary from the TOWN OF EDISTO BEACH, whether elected or not.

Established catalog price means the price included in a catalog, price list, schedule, or other form that:

1. Is regularly maintained by a manufacturer or vendor of an item;
2. Is either published or otherwise available for inspection by customers;
3. State prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.

Grant means the furnishing by the State of South Carolina or the United States government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It

does not include an award the primary purpose of which is to procure specified end products, whether in the form of supplies, services or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract.

Information technology (IT) means data processing, telecommunications and office systems technologies and services:

1. "Data processing" means the automated collection, storage, manipulation and retrieval of data including: central processing units for micro, mini and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory storage and printing systems, data transmission equipment; and related software such as operating systems, library and maintenance routines and applications programs.

2. "Telecommunications" means voice, data, message and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.

3. "Office systems technology" means office equipment such as typewriters, duplicating and photocopy machines, paper forms and records; microfilm and microfiche equipment and printing equipment and services.

4. "Services" means the providing of consultant assistance for any aspect of information technology, systems, and networks.

Invitation for bids means a written or published solicitation issued by the TOWN OF EDISTO BEACH for bids to contract for the procurement or disposal of stated supplies, services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

Office means a non-mobile place for the regular transaction of business or performance of a particular service and staffed by at least one employee on a routine basis.

Political subdivision means all counties, municipalities, school districts, public service or special purpose districts.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration and shall meet all regulations as outlined in this policy.

Purchase description means specifications or any other document describing the supplies, services or construction to be procured.

Real property means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

Release form waiver means a form releasing the TOWN OF EDISTO BEACH from any liability.

Request for proposals (RFP) means a written or published solicitation issued by the TOWN OF EDISTO BEACH for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous

to the TOWN OF EDISTO BEACH. The award of the contract must be made on the basis of evaluation factors, which must be stated in the RFP.

Responsible bidder or offeror means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, which may be substantiated by past performance and financial and technical resources. In determining whether a bidder is responsible, the TOWN OF EDISTO BEACH shall consider at a minimum: 1. The ability, capacity and skill of the bidder to perform the contract or provide the services 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.

Responsive bidder or offeror means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

Services means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance.

State means the State of South Carolina government.

Subcontractor means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the TOWN OF EDISTO BEACH.

Supplies means all personal property including but not limited to equipment, materials, printing, and insurance.

Suspension means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the TOWN OF EDISTO BEACH, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

Term contract means a contract established by the TOWN OF EDISTO BEACH for a specific product or service for a specified time and for which it is mandatory that all governmental bodies procure their requirements for the goods and services during its term. If the TOWN OF EDISTO BEACH is offered goods and services at a price that is at least ten percent less than the term contract price for the same goods or services, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. If the vendor holding the term contract meets the lower price, then the TOWN OF EDISTO BEACH must purchase from the contract vendor.

Valid contract means a contract authorized by the Town Council and signed by the mayor or as authorized by Town Council.

Valid purchase order means a purchase order issued by the TOWN OF EDISTO BEACH.

2-205. – Public access to procurement information.

(A) Procurement information must be a public record to the extent required by Chapter 4, Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.

(B) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information include:

- (1) customer lists;
- (2) design recommendations and identification of prospective problem areas under an RFP;
- (3) design concepts, including methods and procedures;
- (4) biographical data on key employees of the bidder.

(C) For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made.

(D) Evaluative documents pre-decisional in nature such as inter-agency or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter-agency or intra-agency memoranda reflecting the pre-decisional deliberations.

(E) For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents shall comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.

2-206. – Reserved

2-207. - Advisory groups.

The TOWN OF EDISTO BEACH may appoint advisory groups such as user committees to assist with respect to specifications and procurement in specific areas and with respect to any other matters.

2-208. - Reserved

2-209. - Auditing and fiscal reporting.

(A) *Auditing.* External auditors shall review the adequacy of internal controls in order to ensure compliance with the requirements of this policy. Any noncompliance discovered through audit must be transmitted in management letters to the TOWN OF EDISTO BEACH.

(B) *Fiscal reporting.* The town administrator shall assume responsibility for operation and maintenance of the fiscal reporting procedures and shall assume responsibility for providing reports to the Town Council regarding the status of budgets, transfers and expenditures.

2-210. - Reserved

2-211. – Professional services exempt.

Procurement for professional services (to include, but not be limited to, auditing, accounting, legal, appraising, land surveying, master consulting agreements, and engineering) shall be exempt from the requirements of competitive bidding. A professional service is a service provided in support of town operations and/or projects from an independent contractor or consultant which requires certain qualifications by education and/or experience in a particular field or discipline to perform a specialized service, and where the contractor is customarily employed on a fee basis rather than by competitive bidding.

2-212. - Reserved

2-213. - Reserved

2-214. - Methods of source selection.

Unless otherwise provided by law, all TOWN OF EDISTO BEACH contracts amounting to \$25,000.00 or more shall be awarded by competitive sealed bidding pursuant to section 2-215, except as provided in:

1. Section 2-216 (Competitive sealed proposals);
2. Section 2-217 (Negotiations after unsuccessful competitive sealed bidding);
3. Section 2-218 (Small purchases);
4. Section 2-221 (Sole source procurement);
5. Section 2-222 (Cooperative purchasing);
6. Section 2-223 (Emergency procurements);
7. Section 2-225 (Purchase of Used vehicles or Equipment);
8. Section 2-226 (Procurement of information technology);
9. Section 2-227 (Procurement under South Carolina state contract).

10. Section 2-234 (Procurement of construction and construction management services)

11. Section 2-240 (Real Property Transactions)

2-215. - Competitive sealed bidding.

A. *Condition for use.* Contracts amounting to \$25,000.00 or more shall be awarded by competitive sealed bidding except as otherwise provided in section 2-214.

B. *Invitation for bids.* An invitation for bids shall be issued in an efficient and economical manner to include specifications and all contractual terms and conditions applicable to the procurement.

C. *Notice.* Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publication in a local newspaper of general circulation in the town or through the "South Carolina Business Opportunities" or a means of central electronic advertising.

D. *Receipt and safeguarding of bids.* All bids (including modifications) received prior to the time of opening shall be kept secure and unopened.

E. *Bid opening.* 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 amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be tabulated. The tabulation shall be open for public inspection at that time.

F. *Bid acceptance and bid evaluation.* Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this policy. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids.

G. *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and re-award of awards or contracts, after award but prior to performance may be permitted in accordance with regulations promulgated by the TOWN OF EDISTO BEACH. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the TOWN OF EDISTO BEACH or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination of appropriateness made by the TOWN OF EDISTO BEACH.

H. *Discussion with bidders.* As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the town's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the TOWN OF EDISTO BEACH and shall be included with the bid.

I. *Tie bids.* If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:

1. If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.

2. Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the state must be resolved in favor of the South Carolina commodity.

3. Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the town.

4. Tie bids involving South Carolina firms in the town must be resolved by the flip of a coin TOWN OF EDISTO BEACH witnessed by all interested parties.

5. In all other situations where bids are tied, the award will be made by the TOWN OF EDISTO BEACH to the tied bidder offering the quickest delivery time, or if the bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin by the TOWN OF EDISTO BEACH witnessed by all interested parties. All responding bidders must be invited to attend.

J. *Award.* Unless there is a compelling reason to reject bids as determined by the TOWN OF EDISTO BEACH, notice of an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be issued an award letter. Prior to the award letter, the TOWN OF EDISTO BEACH may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids.

K. *Request for qualifications.* Prior to soliciting bids, the TOWN OF EDISTO BEACH may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the goods or services to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided in subsection C of this section. After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest.

L. *Minor informalities and irregularities in bids.* A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The TOWN OF EDISTO BEACH shall either give the bidder an opportunity to cure within 7 days of the bid opening date any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the TOWN OF EDISTO BEACH. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

1. Failure of a bidder to return the number of copies of signed bids required by the solicitation;

2. Failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;

3. Failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;

4. Failure of a bidder to furnish cut sheets or product literature;

5. Failure of a bidder to furnish certificates of insurance;

6. Failure of a bidder to furnish financial statements;

7. Failure of a bidder to furnish references;

8. Failure of a bidder to furnish its bidder number; and

9. The failure of a bidder to indicate his or her contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.

2-216. - Competitive sealed proposals.

A. *Conditions for use.* When the TOWN OF EDISTO BEACH determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the TOWN OF EDISTO BEACH, a contract may be entered into by competitive sealed proposals. The TOWN OF EDISTO BEACH may determine by ordinance that it is either not practicable or not advantageous to the town to procure specified types of supplies, services, or construction by competitive sealed bidding. Contracts for the design-build, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery methods must be entered into by competitive sealed proposals, except as otherwise provided in Sections 2-218 (Small purchases), 2-221 (Sole source procurements), and 2-223 (Emergency procurements).

B. *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in section 2-215(C).

C. *Receipt of proposals.* Proposals shall be opened publicly. A tabulation of proposals shall be prepared and shall be open for public at that time.

D. *Request for qualifications.* Prior to soliciting proposals, the TOWN OF EDISTO BEACH may issue a request for qualifications from prospective offerors. Such request shall contain at a

minimum a description of the goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the request for qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest.

E. *Evaluation factors.* The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may, but need not be an evaluation factor.

F. *Discussion with offerors.* As provided in the request for proposals, discussions, for the purpose of clarification to assure full understanding of the requirements of the request for proposals, may be conducted with offerors, who are determined, by the TOWN OF EDISTO BEACH to have submitted proposals determined to be reasonably susceptible of being selected for award.

G. *Selection, ranking and notification.* Proposals shall be evaluated by the TOWN OF EDISTO BEACH using the criteria and any weightings stated in the request for proposals. Based upon these evaluations, offerors shall be ranked in priority order from best to least qualified. A written report ranking the persons or firms shall be produced with data substantiating such rankings. When the ranking report is final, written notification shall be sent to all firms interviewed.

H. *Negotiations.* The TOWN OF EDISTO BEACH may negotiate as follows:

1. If price were included as an evaluating factor in the request, then price negotiations may be conducted first with the highest ranked offeror. If a satisfactory price cannot be agreed upon, negotiations with that offeror shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, and so on most qualified offeror until a satisfactory contract is negotiated.

2. Matters affecting the scope of the contract, so long as the overall nature and intent of the contract are not changed, may be negotiated first with the highest ranked offeror. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations with that offeror shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, and so on most qualified offeror until a satisfactory contract is negotiated.

3. In conducting negotiations, there must be no disclosure of any confidential information derived from proposals or negotiations of competing offerors.

1. *Reissuance of request for proposals.* If the negotiation process does not yield a satisfactory contract, the request for proposals may be amended and re-advertised. All offerors who responded to the original RFP must be allowed to submit new proposals. The process for evaluation, negotiation, and award shall be the same as for the original request.

J. *Award.* The TOWN OF EDISTO BEACH shall consider for approval the proposal based the evaluation factors set forth in the request for proposals and/or any factors determined through the negotiation process provided in subsection H of this section. Following approval, the notice of award shall be made in writing to the offeror. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit requirements.

2-217. - Negotiations after unsuccessful competitive sealed bidding.

When bids received pursuant to an invitation for bids under section 2-215 are considered unreasonable by the TOWN OF EDISTO BEACH, or are not independently reached in open competition, or the low bid exceeds available funds, and it is determined that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

A. Each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;

B. The negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;

C. The negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

2-218. - Small purchases.

A. *Authority.* The following small purchases rules may be utilized in conducting procurements that are less than \$25,000.00 in actual potential value; provided however, that the procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

B. *Competition and price reasonableness.*

1. *Purchases not in excess of \$2,500.00.* Small purchases for individual items not exceeding \$2,500.00 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Therefore, action to verify the reasonableness of the price need be taken only when the TOWN OF EDISTO BEACH suspects that the price may not be reasonable, e.g., comparison to previous price paid or personal knowledge of the item involved.

2. *Purchases from \$2,500.01 to \$10,000.00.* Verbal solicitations of written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition, documentation may include copies of recent publications outlining the price of the items from three qualified sources. The award shall be made to the lowest responsive and responsible source.

3. *Purchases from \$10,000.01 to \$15,000.00.* Written solicitation of written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.

C. *Requirement to advertise.* All competitive procurements from \$15,000.01 to \$25,000.00 must be advertised at least once in the one of the local newspaper publications or through a means of central electronic advertising. The award shall be made to the lowest responsive and responsible source. The TOWN OF EDISTO BEACH may charge vendors for the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement advertisement.

2-219. - Local vendor preference; limitations.

A. A competitive procurement made by the TOWN OF EDISTO BEACH may be made from responsive and responsible resident local vendors, if such bid does not exceed the lowest qualified bid from a non-local vendor by more than three percent. **This preference is not applicable to procurement for contracts to be paid for in whole or in part with federal funds.**

B. A vendor shall be deemed to be a "local vendor" if such vendor is an individual, partnership, association, or corporation that is authorized to transact business within the state, maintains an office in the Town of Edisto Beach in its normal course of business, and has paid all taxes duly assessed.

C. Local vendors shall submit to the TOWN OF EDISTO BEACH along with the bid sufficient documentation to show that the business has been operating in the town for a period of 90 days prior to the advertisement of the request for proposals. Such evidence may be in the form of a South Carolina business tax license or other such evidence as required.

D. Local preference shall be waived if the purchase is paid from a grant or other funding source which prohibits or restricts such local preference.

E. In the event that there is no local bidder eligible or willing to take advantage of the preference created in this section, then a minority vendor may apply for a preference according to section 2-220 below.

2-220. - Minority vendor preference.

A. A competitive procurement made by the TOWN OF EDISTO BEACH may be made from responsive and responsible minority vendors, if such bid does not exceed the lowest qualified bid from a non-minority vendor by more than three percent. (Affirmative steps should be taken when procuring for contracts to be paid in part or in whole with federal funds. Dividing total requirements when economically feasible, into smaller tasks or quantities to permit maximum participation by small or minority businesses and women's business enterprises is acceptable).

B. Minority vendors shall submit to the TOWN OF EDISTO BEACH, along with the bid response, documentation to show that the business is certified by the state of South Carolina as a "minority business enterprise (MBE)."

C. In accordance with the South Carolina Office of Small and Minority Business Assistance, a vendor shall be deemed to be a "minority vendor" when:

1. A minimum of 51 percent of the business is owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged and such owners exercise control over the business;

2. In the case of a corporation, a minimum of 51 percent of all classes of voting stock of such corporation is owned by an individual or individuals determined to be socially and economically disadvantaged and such individuals exercise control over the business; and

3. In the case of a partnership, a minimum of 51 percent of the partnership interest is owned by an individual or individuals determined to be socially or economically disadvantaged and such individuals exercise control over the business.

D. A minority person means a United States citizen who is economically and socially disadvantaged which is defined as those individuals who are members of the following groups:

1. African-American. Any person having origins in any of the black racial groups of African descent as well as those identified as Jamaican, Trinidadian, and West Indian;

2. Asian or Pacific Islander. Any person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; for example, China, Japan, Korea, the Philippine Islands, and Samoa;

3. Asian-Indian. Any person whose origins are from India, Pakistan and Bangladesh;

4. Hispanic. Any person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race;

5. American Indian and Alaskan Native. Any person having origins in any of the original peoples of North America, who maintain cultural identification through tribal affiliation or community, to include Aleuts and Eskimos; and

6. Women.

E. Minority preference shall be waived if the purchase is paid from a grant or other funding source which prohibits or restricts such minority preference.

2-221. - Sole source procurements.

Any decision by the TOWN OF EDISTO BEACH that a procurement be restricted to one potential vendor must be accompanied by a written explanation as to why no other vendor will be suitable or acceptable to meet the need and be approved by town council. In cases of reasonable doubt, competition must be solicited. **For projects funded in part or whole with federal funds, the Town must demonstrate one of the following-the item is only available through a single**

source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the federal awarding agency or pass through entity expressly authorizes noncompetitive proposals in response to a written request from the Town, or after solicitation of a number of sources, competition is determined inadequate.

2-222. - Cooperative purchasing.

A. *Authorization.* The TOWN OF EDISTO BEACH may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and state public procurement contracts, which shall be made available to local public procurement units.

B. *Sale, acquisition or use of supplies.* The TOWN OF EDISTO BEACH may sell to, acquire from, or use any supplies belonging to another public procurement unit; provided that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement.

C. *Cooperative use of supplies or services.* The TOWN OF EDISTO BEACH may enter into an agreement with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties; provided that such cooperative use of supplies or services shall take place only when the public procurement units have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.

2-223. - Emergency procurements.

Notwithstanding any other provision of this Division, the TOWN OF EDISTO BEACH 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; and provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and attached to the invoice voucher. All contracts procured as an emergency must address exigency or emergency circumstances and be justified in writing when funded in part or whole with federal funds.

2-224. - Reserved

2-225. - Purchase of used vehicles or equipment.

A. The purchase of new vehicles or equipment is generally always preferable. However, there are situations where the purchase of used equipment should be considered. These include, among others, instances where:

1. Price is of utmost importance, and the difference in cost between new and used is significant;

2. Equipment/vehicle will be used infrequently, for a limited time, for training, or for auxiliary operations;

3. Better or shorter term delivery is essential.

B. When it is determined that the purchase of a used vehicle or piece of equipment is in the best interest of the TOWN OF EDISTO BEACH, the TOWN OF EDISTO BEACH shall establish general specifications for the purchase. Such specifications shall include minimum technical requirements, i.e.:

1. Acceptable models (for instance: Ford Explorer, Chevy Tahoe);

2. Type (for instance: 4 × 4, four-door);

3. Year (for instance: 2002 or newer);

4. Engine size (if applicable);

5. Maximum mileage (if applicable);

6. Seating capacity (if applicable);

7. Miscellaneous requirements (for instance: automatic transmission, air conditioning);

8. Any special requirements or restrictions.

C. With these general specifications, the vehicle/equipment will be evaluated on the basis of cost, compliance with specifications, appropriateness for use, general condition, operation, and available warranty in order to secure the best overall deal for the TOWN OF EDISTO BEACH.

2-226. - Procurement of information technology.

A. The town administrator shall be responsible for:

1. Assessing the need for and use of information technology and service support contracts;

2. Administering all procurement and contracting activities;

3. Providing for the disposal of all information technology property surplus to the needs of the TOWN OF EDISTO BEACH;

4. Evaluating the use and management of information technology;

5. Operating a comprehensive inventory and accounting reporting system for information technology;

6. Developing policies and standards for the management of information technology;
7. Initiating a plan for the management and use of information technology; and
8. Procuring management and technical assistance in using information technology.

2-227. - Procurement under South Carolina State Contract.

A. *Authorization.* The TOWN OF EDISTO BEACH may participate in the South Carolina State Contract Purchasing Program (a program that provides goods and services that have been competitively bid by the state) when the desired goods/services are available under such program and when the TOWN OF EDISTO BEACH deems it to be in the best interest of the town to do so.

B. When the decision to purchase under state contract has been made, the particular specifications and pricing for the desired goods/services as provided under state contract may be released to local vendors (defined as businesses operating within the boundaries of the town) in order to provide the opportunity for such vendors to meet or beat the state contract. In order to meet or beat state contract, the local vendor must agree to provide the desired merchandise/services in accordance with the precise specifications defined by the town at the same or a lower price than that offered through state contract.

C. Pursuant to award limits provided in this chapter, the TOWN OF EDISTO BEACH may choose to award the purchasing contract to a local vendor who meets or beats the South Carolina state purchase price and specifications.

D. In lieu of offering the meet or beat opportunity to local vendors or in instances where local vendors cannot meet or beat the state contract, the TOWN OF EDISTO BEACH may determine that the goods/services are best purchased through the vendor awarded the state contract.

2-228. - Cancellation of solicitations.

Any solicitation under this Division may be canceled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the TOWN OF EDISTO BEACH. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

2-229. - Reserved

2-230. - Vendor cost or pricing data.

A. *Contractor certification.* A contractor shall, except as provided in subsection (C) of this section, submit cost or pricing data and shall certify that, to the best of his or her knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:

1. The pricing of any contract awarded by competitive sealed proposals pursuant to 6 or pursuant to the sole source procurement authority as provided in section 2-219 where the total contract price exceeds an amount established by the TOWN OF EDISTO BEACH; or

2. The pricing of any change order or contract modification which exceeds an amount established by the TOWN OF EDISTO BEACH.

B. *Price adjustment.* Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the town, including profit or fee, shall be adjusted to exclude any significant sums by which the town finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between parties.

C. *Cost or pricing data not required.* The requirements of this section shall not apply to contracts:

1. Where the contract price is based on adequate price competition;
2. Where the contract price is based on established catalog prices or market prices;
3. Where contract prices are set by law or regulations; or

4. Where it is determined in writing that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

2-231. - Types and forms of contracts.

A. *Types of contracts.* Subject to the limitations of this section, any type of contract which will promote the best interests of the TOWN OF EDISTO BEACH may be used.

B. *Contract forms.* No contractor shall begin work without signing the worker's compensation insurance statement/waiver agreement and the signing of this agreement shall be coordinated with the TOWN OF EDISTO BEACH.

2-232. – Finality of Determinations.

The determinations required by this purchasing policy are final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.

2-233. – Reserved

2-234. - Procurement of construction and construction management services

(1) *Definitions of terms used in this section.*

(a) "*Construction manager agent*" means a business that has been awarded a separate contract with the TOWN OF EDISTO BEACH to provide construction management services but not construction.

(b) "*Construction manager at-risk*" means a business that has been awarded a separate contract with the TOWN OF EDISTO BEACH to provide both construction management services and construction using the construction management at-risk project delivery method. A contract with a construction manager at-risk may be executed before completion of design.

(c) "*Construction management services*" are those professional services associated with contract administration, project management, and other specified services provided in connection with the administration of the construction management at-risk project delivery method.

(d) "*Construction management at-risk*" means a project delivery method in which the TOWN OF EDISTO BEACH awards separate contracts, one for architectural and engineering services to design an infrastructure facility and the second to a construction manager at-risk for both construction of the infrastructure facility according to the design and construction management services.

(e) "*Design-bid-build*" means a project delivery method in which the TOWN OF EDISTO BEACH sequentially awards separate contracts, the first for architectural and engineering services to design an infrastructure facility and the second for construction of the infrastructure facility according to the design.

(f) "*Design-build*" means a project delivery method in which the TOWN OF EDISTO BEACH enters into a single contract for design and construction of an infrastructure facility.

(g) "*Design-build-finance-operate-maintain*" means a project delivery method in which the TOWN OF EDISTO BEACH enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. Money appropriated by the TOWN OF EDISTO BEACH is not used to pay for a part of the services provided by the contractor during the contract period.

(h) "*Design-build-operate-maintain*" means a project delivery method in which the TOWN OF EDISTO BEACH enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the money required to pay for the services provided by the contractor during the contract period are either appropriated by the TOWN OF EDISTO BEACH before the award of the contract or secured by the TOWN OF EDISTO BEACH through fare, toll, or user charges.

(i) "*Design requirements*" means the written description of the infrastructure facility to be procured pursuant to this subsection, including:

(1) required features, functions, characteristics, qualities, and properties that are required by the TOWN OF EDISTO BEACH;

(2) the anticipated schedule, including start, duration, and completion; and

(3) estimated budgets as applicable to the specific procurement, for design, construction, operation, and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

(j) "*Independent peer reviewer services*" are additional architectural and engineering services that the TOWN OF EDISTO BEACH may acquire in design-build, design-build-operate-maintain, design-build-finance-operate-maintain or progressive design build procurements. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care. If the TOWN OF EDISTO BEACH elects not to contract with the independent peer reviewer proposed by the successful offeror, the independent peer reviewer must be selected by the TOWN OF EDISTO BEACH.

(k) "*Infrastructure facility*" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment, or portion thereof, that provide transportation, utilities, public education, public safety services, or other public services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment, and buildings which provide public and community services.

(l) "*Operations and maintenance*" means a project delivery method in which the TOWN OF EDISTO BEACH enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(m) "*Progressive Design Build*" means a project delivery method that facilitates involvement of the design-build team during the earliest stages of the owner's project development, ensuring they are part of the project team developing design solutions. This method uses qualifications based selection followed by a process where the owner then "progresses" towards a contract price with the team.

(n) "*Proposal development documents*" means drawings and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

(2) The following project delivery methods are authorized for procurements relating to infrastructure facilities:

- (a) design-bid-build;
- (b) construction management at-risk;
- (c) operations and maintenance;
- (d) design-build;
- (e) design-build-operate-maintain;
- (f) design-build-finance-operate-maintain; and
- (g) progressive design build.

(3) Choice of project delivery method. The project delivery method used for a construction project shall be that method which is most advantageous to the TOWN OF EDISTO BEACH and results in the most timely, economical, and successful completion of the construction project. The TOWN OF EDISTO BEACH shall select the appropriate project delivery method for a particular project and shall state in writing the facts and considerations leading to the selection of that particular method.

(4) Source selection methods assigned to project delivery methods.

(a) Scope. Subsection (4) specifies the source selection methods applicable to procurements for the project delivery.

(b) *Design-bid-build*:

(i) Design. Architect-engineer, construction management, and land surveying services. A qualifications based selection process (Request for Proposals) must be used to procure architect-engineer, construction management, and land surveying services, unless those services are acquired in conjunction with construction using one of the project delivery methods.

(ii) Construction. Competitive sealed bidding must be used to procure construction in design-bid-build procurements.

(c) *Construction Management at-risk*. Contracts for construction management at-risk must be procured by Competitive Sealed Proposals or Competitive Sealed Bidding.

(d) *Operations and Maintenance*. Contracts for operations and maintenance must be procured by Competitive Sealed Bidding unless those services are acquired in conjunction with construction using one of the project delivery methods

(e) *Design-build*. Contracts for design-build must be procured by Competitive Sealed Proposals.

(f) *Design-build-operate-maintain*. Contracts for design-build-operate-maintain must be procured by Competitive Sealed Proposals.

(g) *Design-build-finance-operate-maintain*. Contracts for design-build-finance-operate-maintain must be procured by Competitive Sealed Proposals.

(h) *Progressive Design Build*. Contracts for progressive design build must be procured by Competitive Sealed Proposals.

(5) Competitive Sealed Proposals - Procedure.

(a) Public Notice. Adequate public notice of the request for proposals must be given at a reasonable time before the date set forth in it for the opening of proposals. The notice must include publications in "South Carolina Business Opportunities" or a means of central electronic advertising as approved by the designated board office. The TOWN OF EDISTO BEACH may charge vendors the cost incurred for copying and mailing proposal documents requested in response to a procurement.

(b) Receipt of Proposals. Proposals must be opened publicly. A tabulation of proposals must be prepared and must be open for public inspection after contract award.

(c) Request for Qualifications.

(i) Before soliciting proposals, the TOWN OF EDISTO BEACH may issue a request for qualifications from prospective offerors. The request must contain at a minimum a description of the scope of the work to be solicited by the request for proposals and must state the deadline for submission of information and how prospective offerors may apply for consideration. The request must require information only on their qualifications, experience, and ability to perform the requirements of the contract.

(ii) After receipt of the responses to the request for qualifications from prospective offerors, rank of the prospective offerors must be determined in writing from most qualified to least qualified on the basis of the information provided. Proposals then must be solicited from at least the top two prospective offerors by means of a request for proposals. The determination regarding how many proposals to solicit is not subject to review.

(iii) Evaluation Factors. The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.

(d) Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors whose proposals, in the TOWN OF EDISTO BEACH's sole judgment, need clarification must be accorded that opportunity.

(e) Selection and Ranking. Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the TOWN OF EDISTO BEACH, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award must be made in accordance with subsection (g) below.

(f) Negotiations. Whether price was an evaluation factor or not, the TOWN OF EDISTO BEACH, in its sole discretion and not subject to review, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

(i) negotiate with the highest-ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the TOWN OF EDISTO BEACH, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the TOWN OF EDISTO BEACH in its sole discretion;

(ii) during the negotiation process as outlined in item (i) above, if the TOWN OF EDISTO BEACH unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated; or

(iii) the TOWN OF EDISTO BEACH may make changes within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers.

(g) Award. Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the TOWN OF EDISTO BEACH, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the TOWN OF EDISTO BEACH determines to utilize one of the options provided in subsection (f). The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit.

(6) Additional bidding procedures for construction procurement.

(a) Invitation for Bids. The TOWN OF EDISTO BEACH is responsible for developing a formal invitation for bids for each construction project. The invitation must include, but not be limited to, all contractual terms and conditions applicable to the procurement.

(b) The TOWN OF EDISTO BEACH, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors who are expected to perform work for the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the TOWN OF EDISTO BEACH, in consultation with the architect-engineer assigned to the project, may identify by specialty in the invitation for bids a subcontractor who is expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable. A bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors to perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform a portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform that work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract that work except with the approval of the TOWN OF EDISTO BEACH for good cause shown.

(c) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

(d) TOWN OF EDISTO BEACH shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

(e) Unless there is a compelling reason to reject, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location that is specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest. In addition to posting notice, the TOWN OF EDISTO BEACH promptly shall send all responsive bidders a copy of the notice of intended award and of the bid tabulation. The mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest.

(f) After ten days' notice is given, the TOWN OF EDISTO BEACH may enter into a contract with the bidder named in the notice in accordance with the provisions of this section and of the bid solicited.

(g) If, at bid opening, only one bid is received and determined to be responsive and responsible and within the TOWN OF EDISTO BEACH's construction budget, award may be made without the ten-day waiting period.

(h) If bids received pursuant to an invitation for bids exceed available funds, and it is determined in writing by the TOWN OF EDISTO BEACH that circumstances do not permit the delay required to resolicit competitive sealed bids, and the base bid, less deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established

for that portion of the work, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder. The TOWN OF EDISTO BEACH may change the scope of the work to reduce the cost to be within the established construction budget but may not reduce the cost below the established construction budget more than ten percent without a written statement that it is in the best interest of the TOWN OF EDISTO BEACH.

(i) If the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the TOWN OF EDISTO BEACH is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the TOWN OF EDISTO BEACH may move forward with award of the contract at its option.

(7) Subcontractor substitution.

(a) After notice of an award or intended award has been given, whichever is earlier, the prospective contractor identified in the notice may not substitute a business as subcontractor in place of a subcontractor listed in the prospective contractor's bid or proposal, except for one or more of the following reasons:

(i) upon a showing satisfactory to the TOWN OF EDISTO BEACH by the prospective contractor that:

(1) the listed subcontractor is not financially responsible;

(2) the listed subcontractor's scope of work did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the subcontractor's original bid;

(3) the listed subcontractor was listed as a result of an inadvertent clerical error, but only if that request is made within four working days of opening;

(4) the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prospective contractor after the subcontractor had represented to the prospective contractor that the subcontractor could obtain a performance and payment bond; and

(5) the listed subcontractor must be licensed and did not have the license at the time required by law;

(ii) if the listed subcontractor fails or refuses to perform his subcontract;

(iii) if the work of the listed subcontractor is found by the TOWN OF EDISTO BEACH to be substantially unsatisfactory;

(iv) upon mutual agreement of the contractor and subcontractor; and

(v) with the consent of the TOWN OF EDISTO BEACH for good cause shown.

(b) The request for substitution must be made to the TOWN OF EDISTO BEACH in writing. This written request does not give rise to a private right of action against the prospective contractor in the absence of actual malice.

(c) If substitution is allowed, the prospective contractor, before obtaining prices from another subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received before the submission of the prospective contractor's offer. This subsection does not affect a contractor's ability to request withdrawal of a bid in accordance with the provisions of this policy.

(d) This subsection (7) applies to a procurement conducted using the following source selection methods: Construction, Construction Management at-risk, Design-build, Design-build-operate-maintain, and Design-build-finance-operate-maintain.

(8) Prequalification on construction.

(a) In accordance with this subsection, the TOWN OF EDISTO BEACH may limit participation in a solicitation for construction to only those businesses, including potential subcontractors that are prequalified. The prequalification process may be used only with the approval and supervision of the TOWN OF EDISTO BEACH. If businesses are prequalified, the TOWN OF EDISTO BEACH must issue a request for qualifications. Adequate public notice of the request for qualifications must be given. The request must contain, at a minimum, a description of the general scope of work to be acquired, the deadline for submission of information, and how businesses may apply for consideration. The evaluation criteria must include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. Using only the criteria stated in the request for qualifications, businesses must be ranked from most qualified to least qualified. The basis for the ranking must be determined in writing. If fewer than two businesses are prequalified, the prequalification process must be canceled. The determination regarding how many offers to solicit is not subject to review or protest. Subsection (5)(c) (Request for Qualifications) does not apply to a procurement of construction.

(b) In a design-bid-build procurement, the prequalification process may be used only if the construction involved is unique in nature, over ten million dollars in value, or involves special circumstances, as determined by the Architect-Engineer. In a design-bid-build procurement, the minimum requirements for prequalification must be published in the request for qualifications. Offers must be sought from all businesses that meet the published minimum requirements for prequalification.

(9) Additional procedures applicable certain project delivery methods.

(a) Applicability. In addition to the requirements of subsection (5) (Competitive Sealed Proposals), the procedures in this section apply as provided in items (b), (c), and (d) below.

(b) Content of Request for Proposals. A Request for Proposals for design-build, design-build-operate-maintain, design-build-finance-operate-maintain or progressive design build:

(i) must include design requirements;

(ii) must solicit proposal development documents; and

(iii) may, if the TOWN OF EDISTO BEACH determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:

(1) prequalify offerors by issuing a request for qualifications in advance of the request for proposals;

(2) select a short list of responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award before discussions and evaluations if the number of proposals to be short-listed is stated in the Request for Proposals and prompt public notice is given to all offerors as to which proposals have been short-listed; or

(3) pay stipends to unsuccessful offerors, if the amount of the stipends and the terms under which stipends are paid are stated in the Request for Proposals.

(c) Evaluation Factors. A Request for Proposals for design-build, design-build-operate-maintain, design-build-finance-operate-maintain or progressive design build must:

(i) state the relative importance of (1) demonstrated compliance with the design requirements, (2) offeror qualifications, (3) financial capacity, (4) project schedule, (5) price, or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements, and (6) other factors, if any; and

(ii) if applicable, require each offeror to identify an Independent Peer Reviewer whose competence and qualifications to provide that service must be an additional evaluation factor in the award of the contract.

(10) Bond and security.

(a) Bid Security.

(i) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in a design-bid-build procurement in excess of fifty thousand dollars and other contracts as may be prescribed by the TOWN OF EDISTO BEACH. Bid security is a bond provided by a surety company meeting the criteria established by the TOWN OF EDISTO BEACH or otherwise supplied in a form that may be established by the TOWN OF EDISTO BEACH. (All large federally funded projects require bid security)

(ii) Amount of Bid Security. Bid security must be in an amount equal to at least five percent of the amount of the bid at a minimum.

(iii) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating must be given one working day from bid opening to cure the deficiencies. If the bidder is unable to cure these deficiencies within one working day of bid opening, his bid must be rejected.

(iv) Withdrawal of Bids. After the bids are opened, they must be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before bid opening, action must not be had against the bidder or the bid security.

(b) Contract Performance Payment Bonds.

(i) When Required-Amounts. The following bonds or security must be delivered to the TOWN OF EDISTO BEACH and become binding on the parties upon the execution of the contract for construction:

(1) a performance bond satisfactory to the TOWN OF EDISTO BEACH, executed by a surety company meeting the criteria established by the TOWN OF EDISTO BEACH, or otherwise secured in a manner satisfactory to the TOWN OF EDISTO BEACH, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(2) a payment bond satisfactory to the TOWN OF EDISTO BEACH, executed by a surety company meeting the criteria established by the TOWN OF EDISTO BEACH, or otherwise secured in a manner satisfactory to the TOWN OF EDISTO BEACH, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond must be in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(3) in the case of a construction contract valued at fifty thousand dollars or less, the TOWN OF EDISTO BEACH may waive the requirements of (1) and (2) above;

(4) in the case of a construction manager at-risk contract, the solicitation may provide that bonds or security are not required during the project's preconstruction or design phase, if construction does not commence until the requirements of (1) and (2) above have been satisfied.

(5) all federally funded projects exceeding \$100,000 require a payment and performance bond.

(ii) Authority to Require Additional Bonds. Subsection (b) does not limit the authority of the TOWN OF EDISTO BEACH to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in subsection (i) of that subsection in accordance with regulations promulgated by the TOWN OF EDISTO BEACH.

(c) Bonds Forms and Copies.

(i) Bonds Forms. The TOWN OF EDISTO BEACH shall approve the form of the bonds required by this subsection.

(ii) Certified Copies of Bonds. A person may request and obtain from the TOWN OF EDISTO BEACH a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

(d) Retention.

(i) Maximum amount to be withheld. In a contract or subcontract for construction which provides for progress payments in installments based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the TOWN OF EDISTO BEACH or general contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment must be no more than ten percent.

(ii) Release of Retained Funds. When the work to be performed on a construction project or pursuant to a construction contract is to be performed by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor is considered a separate division of the contract for the purpose of retention. As each 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 must be released forthwith to the prime contractor, who, within ten days of its receipt, shall release to the subcontractor responsible for the completed work the full amount of retention previously withheld from him by the prime contractor.

(iii) Bonds for Bid Security and Contract Performance. The requirement of a bond for bid security on a construction contract, pursuant to subsection (a), and a construction contract performance bond, pursuant to subsection (b), may not include a requirement that the surety bond be furnished by a particular surety company or through a particular agent or broker.

(11) Errors and omissions insurance. The TOWN OF EDISTO BEACH shall require offerors to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods.

(12) Other forms of security. The TOWN OF EDISTO BEACH may require one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately or as one element of another project delivery method:

(a) operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations;

(b) letters of credit in an amount appropriate to cover the cost to the TOWN OF EDISTO BEACH of preventing infrastructure service interruptions for a period up to twelve months; and

(c) appropriate written guarantees from the contractor, or depending upon the circumstances, from a parent corporation, to secure the recovery of re-procurement costs to the TOWN OF EDISTO BEACH if the contractor defaults in performance.

(13) Contract clauses and their administration.

(a) Contract Clauses. Construction contracts and subcontracts may include clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions including, but not limited to:

(i) the unilateral right of the TOWN OF EDISTO BEACH to order in writing:

(1) all changes in the work within the scope of the contract, and

(2) all changes in the time of performance of the contract which do not alter the scope of the contract work;

(ii) variations occurring between estimated quantities of work in the contract and actual quantities;

(iii) suspension of work ordered by the TOWN OF EDISTO BEACH;

(iv) site conditions differing from those indicated in the contract or ordinarily encountered.

(b) Price Adjustments.

(i) Adjustments in price pursuant to clauses adopted by the TOWN OF EDISTO BEACH must be computed and documented with a written determination. The price

adjustment agreed upon must approximate the actual cost to the contractor and all costs incurred by the contractor must be justifiably compared with prevailing industry standards, including reasonable profit. Costs must be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon after that as practicable, and must be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:

(1) by unit prices specified in the contract or subsequently agreed upon;

(2) by the costs attributable to the events or situations under those clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon;

(3) by agreement on a fixed price adjustment;

(4) in another manner as the contracting parties may mutually agree; or

(5) in the absence of agreement by the parties, through unilateral determination by the TOWN OF EDISTO BEACH of the costs attributable to the events or situations under those clauses, with adjustment of profit or fee, all as computed by the TOWN OF EDISTO BEACH.

(ii) A contractor is required to submit cost or pricing data if an adjustment in contract price is requested.

(c) Additional Contract Clauses. The construction contracts and subcontracts may include clauses providing for appropriate remedies that cover as a minimum:

(i) specified excuses for delay or nonperformance;

(ii) termination of the contract for default;

(iii) termination of the contract in whole or in part for the convenience of the TOWN OF EDISTO BEACH.

(14) Architect, engineer, or construction manager; performance of other work.

(a) An architect or engineer performing design work, or a construction manager performing construction management services, may not perform other work, by later amendment or separate contract award, on the project as a contractor or subcontractor either directly or through a business in which he or his architectural engineering or construction management firm has greater than a five percent interest.

(b) For purposes of this subsection, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. If the construction manager performs or is responsible for safety compliance and other incidental construction support activities, and these support activities are in noncompliance with the provisions of Section 41-15-210 of the South Carolina Code of Laws, then the construction management firm is subject to all applicable fines and penalties.

(c) This subsection (14) applies only to procurements for construction using the design-bid-build project delivery method.

2-235. - Surety bonds; Town may not designate surety company.

If the TOWN OF EDISTO BEACH enters into a procurement contract and requires the bidder to provide a surety bond to secure the bid or the performance or payment of the contract, the TOWN may not exact that the surety bond be furnished by a particular surety company or through a particular agent or broker.

2-236. - Compliance with Federal Requirements.

Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the TOWN OF EDISTO BEACH successful bidder shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in this Division.

2-237. - Surplus stock.

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

2-238. - Supplies unsuitable for public use, sale or exchange.

The purchasing agent shall have the authority to sell all supplies that have become unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies. All moneys received from such sales shall be paid into the appropriate fund of the town.

2-239. - Legal Remedies

A. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.

(1) Right to Protest; Exclusive Remedy.

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the TOWN OF EDISTO BEACH in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this policy.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the TOWN OF EDISTO BEACH in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this policy; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation is waived and may not be raised as a protest of the award or intended award of a contract.

(c) The rights and remedies granted in this Section 2-239 to bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and

remedies of the bidders, offerors, contractors, or subcontractors against the TOWN OF EDISTO BEACH.

(d) The rights and remedies granted by subsection (1) are not available for contracts with an actual or potential value less than or equal to twenty-five thousand dollars.

(2) Protest Procedure.

(a) A protest pursuant to subsection (1)(a) must be in writing, mailed via certified mail to the TOWN OF EDISTO BEACH, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the TOWN OF EDISTO BEACH within the time provided in subsection (1).

(b) A protest pursuant to subsection (1)(b) must be in writing, mailed via certified mail to the TOWN OF EDISTO BEACH, and must be received by the TOWN OF EDISTO BEACH within the time limits established by subsection (1)(b). At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this policy, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b). A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(3) Authority to Attempt to Settle Protests.

Before commencement of an administrative review as provided in subsection (4), the TOWN OF EDISTO BEACH may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract.

(4) Administrative Hearing and Decision.

If in the opinion of the TOWN OF EDISTO BEACH, after reasonable attempt or determination of futility, a protest cannot be settled by mutual agreement, the TOWN OF EDISTO BEACH shall conduct promptly an administrative hearing. The TOWN OF EDISTO BEACH shall commence the administrative hearing no later than fifteen business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten days of completion of the hearing. The protesting party is entitled to be present, be represented by legal counsel, question witnesses, and testify. The decision must state the reasons for the action taken.

(5) Notice of Decision.

A copy of the decision under subsection (4) must be mailed or otherwise furnished immediately to the protestant and other party intervening. The TOWN OF EDISTO BEACH also shall post a copy of the decision at the town and the posted decision must indicate the date of posting on its face.

(6) Finality of Decision.

A decision pursuant to subsection (4) is final and conclusive, unless fraudulent.

(7) Automatic Stay of Procurement During Protests.

In the event of a timely protest pursuant to subsection (1), the TOWN OF EDISTO BEACH shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted.

B. Authority to debar or suspend.

(1) Authority. After reasonable notice to the person or firm involved, and a reasonable opportunity for that person or firm to be heard, the TOWN OF EDISTO BEACH has the authority to debar a person or firm for cause from consideration for award of contracts or subcontracts if doing so is in the best interest of the TOWN OF EDISTO BEACH and there is probable cause for debarment. The TOWN OF EDISTO BEACH also may suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. The period of debarment or suspension is as prescribed by the TOWN OF EDISTO BEACH.

(2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or another offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;

(d) violation of contract provisions, as set forth below, of a character regarded by the TOWN OF EDISTO BEACH to be so serious as to justify debarment action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment;

(e) violation of an order of a chief procurement officer or Procurement Review Panel; and

(f) any other cause the TOWN OF EDISTO BEACH determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor, including debarment by another governmental entity for any cause listed in this subsection.

(3) Decision. The TOWN OF EDISTO BEACH shall issue a written decision to debar or suspend

within ten days of the completion of his administrative review of the matter. The decision must state the action taken, the specific reasons for it, and the period of debarment or suspension, if any.

(4) Notice of Decision. A copy of the decision pursuant to subsection (3) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent.

(6) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organization elements, or commodities. The TOWN OF EDISTO BEACH may extend the debarment decision to include any principals and affiliates of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond. For purposes of this section, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment. For purposes of this section, the term "principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions.

C. Solicitations or awards in violation of the law.

(1) Applicability. The provisions of this subsection apply where it is determined by the TOWN OF EDISTO BEACH, upon administrative review, that a solicitation or award of a contract is in violation of the law.

(2) Remedies Prior to Award. If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:

- (a) canceled;
- (b) revised to comply with the law and rebid; or
- (c) awarded in a manner that complies with the provisions of this policy.

(3) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law:

- (a) the contract may be ratified and affirmed, provided it is in the best interests of the TOWN OF EDISTO BEACH; or
- (b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.

D. Frivolous protests.

(1) Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read the document, to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and it is not interposed for an improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

(2) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document that is filed with the TOWN OF EDISTO BEACH is signed in violation of this subsection, the TOWN OF EDISTO BEACH, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction to include, but not be limited to dismissal of the protest and debarment.

2-240. – Real Property Transactions

The following rules shall apply to the purchase of real property and conveyance of Town-owned real property:

(1) The Town shall sell, contract to sell, convey, transfer, or acquire by purchase, exchange or gift, real property only upon approval of Town Council. At least one (1) appraisal by a certified appraiser shall be received.

(2) Sale, conveyance, or transfer of Town-owned real property shall not occur until approval of an ordinance upon second reading.

(3) Subject to paragraph (5) below, the sale or other disposal of real property owned by the Town shall be made pursuant to requests for proposals. The Town reserves the right to accept or reject proposals at its sole discretion. The decision to accept a particular proposal shall be made based upon what is in the best interests of or more advantageous to the Town and basis for the decision shall be supported in writing.

(4) Notwithstanding paragraph (1) above, the exchange of real property is to be permitted only after appraisal of both properties by two (2) certified appraisers, unless both the parties agree in writing to accept the appraisal results of one (1) certified appraiser.

(5) Town Council shall retain the authority to determine, at its discretion, an appropriate alternative method for disposal of any Town-owned real property, including, but not limited to, conveyance for no consideration or consideration less than appraisal value to (1) the State, (2) another political subdivision, or (3) any other person or entity when the conveyance is beneficial to the Town or its citizens as documented in writing.

This ordinance shall take effect upon final reading.

Jane S. Darby, Mayor

First Reading: _____

ATTEST:

Final Reading: _____

Deborah Hargis, Municipal Clerk

Approved as to form: _____

V. I

No. 2019-17

TOWN OF EDISTO BEACH

AN ORDINANCE

TO AMEND ARTICLE IV OF CHAPTER 2 OF THE TOWN'S CODE OF ORDINANCES ENACT DIVISION 3 ENTITLED "ETHICS IN PUBLIC CONTRACTING"

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, South Carolina, in council duly assembled that Article IV of Chapter 2 of the Town's Code of Ordinances is amended and restated to read as follows:

DIVISION 3. – ETHICS IN PUBLIC CONTRACTING

Sec. 2-300. - Definitions of Terms Used in this Division.

- (1) *Blind Trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (2) *Confidential Information* means any information which is available to an employee only because of the employee's status as an employee of the Town of Edisto Beach and is not a matter of public knowledge or available to the public on request.
- (3) *Conspicuously* means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (4) *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (5) *Financial Interest* means:
 - (a) Ownership of an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more; or

- (b) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (6) *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (7) *Immediate Family* means:
- (a) a child residing in a public official's, public member's, or public employee's household;
 - (b) a spouse of a public official, public member, or public employee; or
 - (c) an individual claimed by the public official, public member, or public employee or the public official's, public member's, or public employee's spouse as a dependent for income tax purposes.
- (8) *Official Responsibility* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct Town of Edisto Beach action.
- (9) *Purchase Request* means that document whereby a Using Agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.
- (10) *Family member* means an individual who is:
- a. the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild; or
 - b. a member of the individual's immediate family.
- (11) *Public Official* shall mean public member, elected official, appointed official, and public employee.

Sec. 2-301. - Statement of Policy.

Public employment is a public trust. It is the policy of the Town of Edisto Beach to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the Town. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public officials must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Town of Edisto Beach procurement organization.

To achieve the purpose of the Division, it is essential that those doing business with the Town of Edisto Beach also observe the ethical standards prescribed herein.

Sec. 2-302. - General Standards of Ethical Conduct.

- (1) *General Ethical Standards for Public Officials.* Any attempt to realize personal gain through public service by conduct inconsistent with the proper discharge of the public official's duties, including, but not limited to, theft, breach of trust, embezzlement, fraud, and deceit, is a breach of a public trust.

In order to fulfill this general prescribed standard, public officials must also meet the specific standards set forth in: Section 2-304 (Public Official Conflict of Interest); 2-305 (Public Official Disclosure Requirements); 2-306 (Gratuities and Kickbacks); 2-307 (Prohibition Against Contingent Fees); 2-308 (Restrictions on Employment of Present and Former Public Officials); and 2-309 (Use of Confidential Information).

- (2) *General Ethical Standards for Non-Public Officials.* Any effort to influence any public official to breach the standards of ethical conduct set forth in this Division is also a breach of ethical standards.

Sec. 2-303. - Criminal Sanctions.

To the extent that violations of the ethical standards set forth in this Division constitute violations of State and/or Federal law, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Division.

Sec. 2-304. - Public Official Conflict of Interest.

- (1) *Conflict of Interest.* It shall be breach of ethical standards for any public official to participate directly or indirectly in a procurement when the public official knows that;
 - (a) the public official or the public official's family member has a financial interest pertaining to the procurement;
 - (b) a business or organization in which the public official, or the public official's family member, has a financial interest pertaining to the procurement; or
 - (c) any other person, business, or organization with whom the public official or the public official's family member is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (2) *Financial Interest in a Blind Trust.* Where a public official or any member of the public official's immediate family holds a financial interest in a blind trust, the public official shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Town.
- (3) *Discovery of Actual or Potential Conflict of Interest, Disqualification.* Upon discovery of an actual or potential conflict of interest, a public official shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.
- (4) *Notice.* Notice of this prohibition shall be provided in accordance with regulations promulgated herein.

Sec. 2-305. - Public Official Disclosure Requirements.

- (1) *Disclosure of Benefit Received from Contract.* Any public official who has, or obtains, any benefit from any Town contract with a business in which the public official has a financial interest shall report such benefit to the Town Administrator; provided, however, this section shall not apply to a contract with a business where the public official's interest in the business has been placed in a disclosed blind trust.
- (2) *Failure to Disclose Benefit Received.* Any public official who knows or should have known of such benefit, and fails to report such benefit to the Town Administrator, is in breach of the ethical standards of this Division.

- (3) *Notice.* Notice of this requirement shall be provided in accordance with regulations promulgated herein.

Sec. 2-306. - Gratuities and Kickbacks.

- (1) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any public official or former public official, or for any public official or former public official to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (2) *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

Sec. 2-307. - Prohibition Against Contingent Fees.

- (1) *Contingent Fees.* It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of *bona fide* public officials or *bona fide* established commercial selling agencies for the purpose of securing business.
- (2) *Representation of Contractor.* Every person, before being awarded a Town contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (1) of this section. Failure to do so constitutes a breach of ethical standards.
- (3) *Contact Clause.* The representation prescribed in Subsection (2) of this section shall be conspicuously set forth in every contract and solicitation therefor.

Sec. 2-308. - Restrictions on Employment of Present and Former Public Officials.

(1) *Contemporaneous Employment Prohibited.* It shall be a breach of ethical standards for any public official who is participating directly or indirectly in the procurement process to become or be the employee of any person contracting with the governmental body by whom the public official serves. Notice of this provision shall be provided in accordance with regulations promulgated herein.

(2) *Restrictions on Former Public officials in Matters Connected with Their Former Duties.*

(a) *Permanent Disqualification of Former Public Official Personally Involved in a Particular Matter.* It shall be a breach of ethical standards for any former public official knowingly to act as a principal, or as an agent for anyone other than the Town, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy,

in which the public official participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an public official, where the Town is a party or has a direct and substantial interest.

(b) *One Year Representation Restriction Regarding Matters for Which a Former Public Official Was Officially Responsible.* It shall be a breach of ethical standards for any former public official, within one year after cessation of the former public official's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the Town, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy

in matters which were within the former public official's official responsibility, or where the Town is a party or has a direct or substantial interest.

(3) *Disqualification of Business When an Public Official Has a Financial Interest.*

It shall be a breach of ethical standards for a business in which an public official has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Town, in connection with any:

- (a) judicial or other proceeding, application, request for a ruling, or other determination;
- (b) contract;
- (c) claim; or
- (d) charge or controversy,

in which the public official either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the public official's official responsibility, where the Town is a party or has a direct and substantial interest.

Sec. 2-309. - Use of Confidential Information.

It shall be a breach of ethical standards for any public official or former public official knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

Sec. 2-310. - Civil and Administrative Remedies Against Public Officials Who Breach Ethical Standards.

(1) *Existing Remedies Not Impaired.* Civil and administrative remedies against public officials which are in existence on the effective date of adoption of this Division shall not be impaired.

(2) *Supplemental Remedies.* In addition to existing remedies for breach of the ethical standards of this Division or regulations promulgated hereunder, the Town may impose any one or more of the following:

- (a) oral or written warnings or reprimands;
- (b) termination of transactions; and
- (c) debarment or suspension from being a contractor or subcontractor under Town contracts.

- (3) *Right to Recovery from Non-Public Official Value Transferred in Breach of Ethical Standards.* The value of anything transferred in breach of the ethical standards of this Division or regulations promulgated hereunder by a non-public official shall be recoverable by the Town as provided in Section 2-311 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
- (4) *Right of the Town to Debar or Suspend.* Debarment or suspension of a contractor, subcontractor, or other non-public official may be imposed by the Town Council in accordance with the procedures set forth in Section 2-239(B) (Authority to Debar or Suspend) for breach of the ethical standards of this Division.
- (5) *Due Process.* All procedures under this section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a Town contract.

Sec. 2-311. - Recovery of Value Transferred or Received in Breach of Ethical Standards.

- (1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this Division or regulations promulgated hereunder by a public official or a non-public official may be recovered from both the public official and non-public official.
- (2) *Recovery of Kickbacks by the Town.* Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately was included in the price of the subcontract or order and ultimately borne by the Town and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

Sec. 2-312. - Regulations.

The Town Administrator with approval of the Town Council may promulgate procedures to implement this Division.

This ordinance shall take effect upon final reading.

Jane S. Darby, Mayor

First Reading: _____

ATTEST:

Final Reading: _____

Deborah Hargis, Municipal Clerk

Approved as to form: _____