

Municipal Association of South Carolina

MODEL PURCHASING ORDINANCE

Background

Under the State Procurement Code, effective July 30, 1981, all local governments in South Carolina are required to adopt a purchasing or procurement ordinance by July 1, 1983.

S.11-35-50. Political subdivisions required to develop and adopt procurement laws. All political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983. The Budget and Control Board, In cooperation with the Procurement Policy Committee and subdivisions concerned, shall create a task force to draft model ordinances, regulations and manuals for consideration by the political subdivisions. The expenses of the task force shall be funded by the General Assembly. The task force shall complete its work no later than January 1, 1982. HISTORY: 1981 Act No. 148, S.1, eff July 30, 1981.

The model ordinance developed by the State Task Force was published by the Division of General Services in early 1982. this document is very comprehensive, 28 pages in length, and most suitable to large jurisdictions having a full—time purchasing organization. It is a complete and well constructed document. A copy of the Task Forces Model Ordinance may be obtained from:

Ms. Barbara McMillan
General Services – Contracting & Compliance
BOO Dutch Plaza
Columbia, SC 29210.

Several municipal officials requested that MASC develop a Model Ordinance that would meet the state requirements but in a less complex and comprehensive format.

Acknowledgment

Assistance in the development of MASC Model Purchasing Ordinance was provided by several municipal officials. MASC would like to acknowledge their assistance and express appreciation for their time and efforts.

Roland Windham, City Manager
City of Aiken

Jim Budds, Administrator
City of Bennettsville

Allan Mum, Administrator
City of Bishopville

Russell Allen, City Manager

City of Clinton

Cecil Ward, Administrator
City of Darlington

Bill Snow, Finance Director
City of Florence

Quinton Martin, Administrator
City of Hanahan

David Bates, Administrator
City of Mauldin

John Potter, Finance Director
City of North Myrtle Beach

Chris Bickley, City Manager
City of Walterboro

Jim Varner, City Manager
City of York

Comments on the Model Ordinance

The following suggestions and comments were made by those officials who assisted in the finalization of the “Model Ordinance”.

- Dollar amounts are suggested only and should be set at levels that are workable for each municipality.
- The purchasing ordinance should be supplemented with a more detailed purchasing procedures manual and purchase order system. Such a system may describe an encumbrance procedure to tie the purchase orders to the accounting system and the use of “open” purchase orders for purchasing supplies on a monthly basis.
- Approving Authority may vary with the form of government. The “model” is written with the city council as the final authority. This is suggested form only and should be tailored to meet the existing procedures of the municipality.

Conclusion

The basic concept behind the development of this model purchasing ordinance was to cover the basic items that should be considered in a purchasing ordinance. As indicated in the comments section above, this ordinance should be tailored to meet local operating requirements.

If you have any questions on this ordinance please contact; Jim Robey at MASC.

Model Purchasing Ordinance

An Ordinance creating the position of Purchasing Agent and establishing Purchasing Procedures for the City of _____.

Be it ordained by the Council of the City of _____: Section 1. Purchasing Agent, specified duties.

The (City Manager)(Administrator), or an officer of the city designated by the (City Manager) (Administrator), shall be the Purchasing Agent for the City. He/She shall be responsible for:

- (A) The purchase of supplies, materials and equipment and contractual services required by any office, department or agency of the city government.
- (B) The storage and distribution of all supplies, materials and equipment required by any office, department or agency of the city government.
- (C) Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any office, department or agency of the city government. Such specifications shall be definite and certain and shall permit of competition.
- (D) Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in storerooms or warehouses.
- (E) Soliciting and maintaining an up-to-date list of qualified suppliers who have requested their names to be added to a “bidders list”. The purchasing agent shall have authority to remove temporarily the names of vendors who have defaulted on their quotations, attempted to defraud the city or who have failed to meet established specifications or delivery dates.
- (F) Obtaining as full and open competition as possible on all purchases, contracts and sales.

Section 2. Formal contract procedure

All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed five thousand dollars, shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting proposals. No contract or purchase shall be subdivided to avoid the requirements of this section. All sales of personal property which has become obsolete or unusable, when the estimated value shall exceed five thousand dollars, shall be sold by formal written contract or at a public auction to the highest responsible bidder, after due notice inviting proposals and bidders.

Section 2.1 Bidding – Competitive, required exception

Before any purchases or contracts for supplies, materials, equipment or services exceeding one hundred dollars are made, the purchasing agent shall give ample opportunity for competitive bidding. For purchases or contracts not exceeding one thousand dollars, oral bids may be accepted.

All other bids shall be in writing. Competitive bidding shall be encouraged for all contracts, purchases or sales. However, in the event of an emergency affecting the public welfare, health or safety, the provisions of this section

shall not apply. A full report of the circumstances of an emergency purchase shall be filled by the purchasing agent with the city council and shall be entered in the minutes of the council.

Section 2.2. Award to lowest bidder; advertising, when required

All contracts for city improvements, materials, equipment, or services costing more than five thousand dollars shall be awarded to the lowest responsible bidder after publication in a newspaper of general circulation in the city at least five days before the last day set for receipt of proposals; provided, however, that in case of professional services, this section shall not apply. The newspaper notice required herein shall include a general description of the articles or services to be purchased, shall state where bid blanks and specifications may be secured and the time and place for opening bids.

Section 2.3. Bid Deposits

When deemed necessary by the purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Upon entering into a contract, bidders shall be entitled to return of bid deposit where the purchasing agent has required such. A successful bidder shall forfeit any bid deposit required by the purchasing agent upon failure on his part to enter into a contract within ten days after the award; provided, however, that the city, in its uncontrolled discretion, may waive this forfeiture.

Section 2.4. Sealed Bid Procedures

Procedure for sealed bids shall be as follows:

- (A) Sealing. Bids shall be submitted to the purchasing agent securely sealed in an envelope, and shall be identified on the envelope in accordance with bid instructions.
- (B) Opening. Bids shall be opened in public at the time and place stated in the public notices.
- (C) Tabulation. A tabulation of all bids received shall be available for public inspection.
- (D) Rejection of bids. The purchasing agent shall have the authority to reject all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby.
- (E) Bidders in default to city. The purchasing agent shall not accept the bid of a vendor or contractor who is delinquent in the payment of taxes, license, or other moneys due the city.
- (F) Award of contract:
 - (1) Authority in agent. The purchasing agent shall have the authority to award contracts within the purview of this article; provided, however, that contracts in excess one thousand dollars shall not be awarded without prior approval of city council.
 - (2) Lowest responsible bidder. Contracts shall be awarded to the lowest responsible bidder. In determining “lowest responsible bidder”, in addition to price, the purchasing agent shall consider:

- (a) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (b) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (d) The quality of performance of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- (f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (g) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- (h) The ability of the bidder to provide future maintenance and service for the use of the subject: of the contract;
- (i) The number and scope of conditions attached to the bid.

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

(H) Tie bids:

(1) Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to the local bidder. If two or more of such bids are submitted by local bidders, the purchasing agent shall award the contract to one of the local tie bidders by drawing lots in public. If local bidders are not involved in the tie bids, the purchasing agent shall award the contract to one of the outside tie bidders by drawing lots in public. The purchasing agent, local bidders, and vendors should bear in mind, however, that to award a contract to a local vendor where he is not the lowest responsible bidder, or where price, quality and service are not equal, is to give preference to one minute segment of the citizenry against the best interests of the community as a whole.

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

(J) Payment Bond/Labor and Material Bond. The Purchasing agent may require a Payment Bond and a Labor and Material Bond, before entering into a contract, in such form and amount as he/she shall deem necessary to protect the best interest of the city.

Section 2.5 Materials Testing

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

Section 3. Financial interest of city officials and employees prohibited

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

Section 4. Records of open market orders and bids

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

Section 5. Stock reports

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

Section 6 Surplus stock

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

Section 7. Supplies unsuitable for public use, sale or exchange

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

Section 8. Gifts and Rebates

The purchasing agent and every officer and employee of the City are expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is, or might be awarded, any rebate, gift, money, or anything of value whatsoever, except where given for the use and benefit of the City.

Section 9. Cooperative purchasing

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