

ORDINANCE 10_____

AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE VI, PROCUREMENT; TO ADD A DIVISION ONE AND DIVISION TWO; TO PROVIDE DEFINITIONS; TO PROVIDE FOR A GENERAL PURCHASING PROCESS; TO PROVIDE COMPETATIVE BIDDING PROCESSES; TO PROVIDE GUIDELINES FOR PUBLIC PRIVATE PARTNERSHIP UNSOLICITED PROPOSALS; TO PROVIDE FOR AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

The commission of the City of Brunswick hereby ordains that the Code of Ordinances of the City of Brunswick be and it is hereby amended as follows:

SECTION ONE:

Chapter 2, Article VI, is hereby deleted in its entirety and is replaced by a new Article VI, Procurement, which shall provide:

ARTICLE VI. - PROCUREMENT

DIVISION ONE – General Purchasing

Sec. 2-351. - Purpose or Application

This article applies to contracts for the procurement of supplies, services and construction, entered into by the city after the effective date of this article. It shall apply to every expenditure of public funds for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this article shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

Sec. 2-352 - Definitions.

The following terms shall have the meaning provided for by O.C.G.A. § 36-91-1: competitive sealed bidding, competitive sealed proposals, emergency, public works construction, responsible bidder or responsible offeror, scope of project, scope of work, and sole source.

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

Change order. A written order signed and issued by the city manager, directing the contractor to make changes as provided under the "changes" clause of the contract.

City. The Mayor and Commissioners of the City of Brunswick; the City of Brunswick.

Contract modification (bilateral change). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Confidential information. Any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.

Construction. The process of building, altering, repairing, 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. All types of agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

Contractor. Any person having a contract with the city or a using agency thereof.

Cost analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.

Cost data. Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Direct or indirect participation. 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.

Disadvantaged business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

Employee: An individual drawing a salary or wages from the city whether elected or not; any non-compensated individual performing personal services for the city or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of the city and any non-compensated individual serving as an elected official of the city.

Financial interest.

1. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, a fee or salary;
2. Ownership of any property or business; or
3. Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate family. A spouse, children, parents, brothers and sisters.

Invitation for bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Local vendor. A bidder or business shall be considered a local vendor if it meets all of the following requirements:

1. The bidder or business must operate and maintain a headquarters, distribution point, division, office, or locally-owned franchise with a physical address within the corporate limits of the city or Glynn County, and
2. The bidder or business must, at the time of bid, proposal, or quotation submission, have a current city business tax certificate issued by the city for at least one year prior to the issuance of the requested competitive quote, bid, or proposal by the city (a post office box or temporary office shall not be considered a place of business) or an equivalent license issued by Glynn County;
3. The business owner must serve a commercially useful function, meaning performance of real and actual service in the discharge of any contractual endeavor. The contractor/vendor must perform a distinct element of work for which the business owner has the skills, qualifications and expertise, as well as the responsibility for the actual performance, management and supervision of the work for which he/she has been contracted to perform.

Minority business enterprise. means a business concern that has been certified to be at least 51 percent owned, managed, operated and controlled by one or more minorities, or in the case of publicly owned business, at least 51 percent of the stock is owned by one or more minorities who are a member of any of the following groups:

1. *African American.* All persons 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.* All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa;
3. *Asian-Indian.* All persons whose origins are from India, Pakistan and Bangladesh;
4. *Hispanic.* All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; and
5. *American Indian and Alaskan native.* All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community; to include Aleuts and Eskimo.

Person. Any business, individual, union, committee, club, other organization, or group of individuals.

Price analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of 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 contract, and all phases of contract administration.

Purchasing agent. The city's purchasing agent.

Qualified products list. An approved list of supplies, services or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the city manager or his designee has determined will meet the applicable specification requirements.

Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Services. The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements.

Specification. Any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

Supplies. Equipment, materials, commodities and printing.

Using agency. Any department, commission, board or public agency requiring supplies, services, or construction procured pursuant to this article.

Women-owned business enterprise (WBE). A business concern that has been certified to be:

1. At least 51 percent owned, managed, operated and controlled by one or more women who are not a member of a racial minority or in the case of publicly owned business, at least 51 percent of the stock is owned by one or more women; and
2. Whose daily business operations are managed and directed by one or more of the women owners.

Disadvantaged business enterprise (DBE). An entity certified as a DBE by any federal or state agency. To become certified, a company must be a for profit small business concern where socially and economically disadvantaged individuals own at least a 51 percent interest and also control management and daily business operations. Further, companies must meet all other eligibility requirements as set by the U.S. Department of Transportation.

Sec. 2-353 – Principal purchasing official.

Except as otherwise provided herein, the purchasing agent shall serve as the principal public purchasing official for the city and shall be responsible to the city manager or his designee for the procurement of supplies, services and construction in accordance with this article.

(a) *Duties.* In accordance with this article, the purchasing agent shall:

1. Procure or supervise the procurement of all supplies, services and construction needed by the various departments and agencies of the city.

2. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services and construction.

(b) *Operational procedures.* Consistent with this article, the purchasing agent shall prepare for the city manager's signature a manual setting forth purchasing procedures and controls that shall be followed by the departments and agencies of the city.

Sec. 2-354 – Competitive solicitation of public works construction contracts.

Public works construction contracts shall be solicited and executed as provided for by O.C.G.A. §§ 36-91-20, 36-91-21, and 36-91-22 as said provisions might apply at the time of contracting.

Sec. 2-355. - Federal and state contracting requirements.

The city shall follow the requirements of any mandatory state or mandatory federal statutes, rules, or regulations as may be applicable to solicitation and execution of its contracts.

Sec. 2-356. – Competitive sealed bidding.

(a) *Conditions for use.* All contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 2-354, section 2-355, section 2-356, and section 2-357 of this division.

(b) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.

(c) *Public notice.* Public notice of the invitation for bids, including publication in a newspaper of general circulation, shall be given not less than 15 calendar days prior to the date set forth therein for the opening of bids. Such notice shall state the place, date and time of bid opening.

(d) *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 the purchasing agent deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection in accordance the open records law.

(e) *Bid acceptance and bid evaluation.* Bids shall be received without alteration or correction, except as authorized in this article. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to

determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria, such as discounts, transportation costs, and total or life cycle costs, that will affect the bid price and be considered in evaluating bids shall be objectively measured. 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.

(f) *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office of the purchasing agent prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show that a mistake was made, the nature of the mistake, and the bid price actually intended. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw the bid if:

1. The mistake is clearly evident on the fact [face] of the bid document and the intended correct bid is not similarly evident; or
2. The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(g) *Award.*

1. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds and such bid does not exceed such funds by more than five percent, the city manager is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.
2. *Multistep sealed bidding.* When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

3. *Local Vendor Preference.* There is established in the City of Brunswick a local vendor privilege. The Mayor and Board of Commissioners believes that proposals awarded to local vendors contribute to the local tax base and benefit the economy of the City of Brunswick and will therefore be given special consideration when bidding.
 - a. A local vendor shall be afforded the opportunity to match the bid amount of the lowest responsive and responsible bid if: (1) the lowest responsive and responsible bidder is not local vendor; (2) the local vendor is the second lowest responsive and responsible bidder; and (3) the local vendor's bid is within two percent (2%) or \$10,000, whichever is less, or within \$500 of the lowest bid. If the local vendor agrees to match the amount of the low bid received from the out-of-county vendor within the time specific by the City, the bid shall be awarded to the local vendor. If the local vendor does not agree to match the low bid received from the out-of-county vendor within the time specified by the City, the bid shall be awarded to the out-of-county vendor.
 - b. In the event that more than one local vendor meets the criteria in subsection (a), the opportunity to match the low bid shall be afforded to the winner of a coin toss by the purchasing agent in a public session where vendors and one or more witness may be present.
 - c. The local vendor privilege shall not apply to any bid or contract that is subject to the competitive bedding requirements of the "Georgia Local Government Public Works Construction Law", O.C.G.A. § 36-91-1 et seq., the bidding requirements for road construction contracts in Chapter 4, Title 32, of the Official Code of Georgia, or where prohibited by the state or federal law.

Sec. 2-357. – Competitive sealed proposals.

- (a) *Conditions for use.* When it is determined that the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the competitive sealed proposals method.
- (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
- (c) *Public notice.* Public notice of not less than 15 calendar days shall be given for request for proposals in the same manner as provided in section 2-356(c).
- (d) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of

each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

- (e) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors.
- (f) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible 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 conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (g) *Award.* An award will be made to the responsible offeror whose proposal is determined to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made.
- (h) *Local Vendor Preference.* There is established in the City of Brunswick a local vendor privilege. The Mayor and Board of Commissioners believes that proposals awarded to local vendors contribute to the local tax base and benefit the economy of the City of Brunswick and will therefore be given special consideration when making a proposal. Local preference shall be included in a request for proposals as an evaluation criterion to be considered by the evaluating team. Two percent (2%) of the total points available to each proposer shall be awarded on the basis of whether the proposal was submitted by a local vendor. Local vendors shall be entitled to and shall receive the preference points provided for in this subsection. This local vendor privilege shall not apply where prohibited by state or federal law.

Sec. 2-358. - Contracts involving expenditures below \$25,000.00.

Contracts involving expenditures of less than \$25,000.00 of city funds may be negotiated and executed by the city manager under such terms as the city manager may determine to be in the best interest of the city, subject to the city manager's obligation to inform the city commission of such contractual arrangements.

Sec. 2-359. – Sole-source procurement.

A contract may be awarded without competition when the purchasing agent determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service or construction item. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole-source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file.

Sec. 2-360. - Emergency procurements.

Notwithstanding any other provisions of this article, the city manager may make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, safety or property; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. If the procurement cost exceeds \$25,000.00, then such procurement shall be entered into the minutes of the regular meeting of the Mayor and Commission next following the date the emergency procurement was made. A record of each emergency procurement shall be placed in the contract file which shall set forth the contractor's name, the amount and type of contract, a listing of the item(s) procured under the contract, the identification number of the contract and a written explanation of the basis for the emergency and for the selection of the particular contractor.

Sec. 2-361. - Cancellation of invitations for bids or requests for proposals.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited or that submitted bids.

Sec. 2-362. - Responsible bidders and offerors.

If a bidder or offeror who otherwise would have been awarded a contract is found not to be responsible, a written report and recommendation on such finding, setting forth the basis of the finding, shall be submitted to the Mayor and Commissioners by the city manager. Failure of a bidder or offeror to supply promptly information in connection with an inquiry on the responsibility of a bidder or offeror may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the report shall be sent promptly to the non-responsible bidder or offeror. The report shall be made part of the contract file and shall be a public record.

Sec. 2-363. – Small, women-owned, and minority business enterprises.

(a) *Expand participation.* Affirmative steps shall be taken to assure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services and construction items.

(b) *Examples of affirmative steps.* Affirmative steps to be taken will include but not be limited to:

1. Including qualified small, women-owned, and minority businesses on solicitation lists;
2. Assuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, women-owned, and minority business participation;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority businesses.

Sec. 2-364. - Employee conflict of interest.

No city employee shall participate directly or indirectly in a procurement contract that the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement contract.

Sec. 2-365. - Intergovernmental contracts.

Contracts with other governmental entities, including but not limited to the State of Georgia, and its political subdivisions, agencies, departments, authorities, and boards, the County of Glynn, the United States or any of its agencies or departments, or any municipal corporation, may be approved by vote of the city commission at any regular or called meeting of the commission or any joint meeting of the commission and the governing body of such other contracting entity.

Sec. 2-366. - Ongoing/continuing contracts.

Open-ended contracts for as-needed construction, demolition, repairs, maintenance, or provision of services, material, equipment, or supplies may be entered into by the city commission or city manager in accordance with the terms of this article.

Sec. 2-367. - Advertisements.

Advertisements, where mandated by state or federal law or rule, shall be done in accordance with the requirements of the applicable law or rule; in contract solicitation not involving mandatory advertisement, any advertisement shall be made in such general circulation newspaper as the city uses for its general legal advertisements, in such manner and at such times as the city commission may determine to be in the best interest of the city.

Sec. 2-368. - Substantial compliance.

Any contract entered on behalf of the city without substantial compliance with this article VI of chapter 2 of the City Code shall be voidable by the City Commission, which may declare void or ratify the contract.

DIVISION TWO – Unsolicited Proposals

Sec. 2-369 – General Purpose

The purpose of this ordinance is to establish guidelines in accordance with the Georgia Partnership for Public Facilities and Infrastructure Law, which allows municipalities to entertain unsolicited proposals for certain qualifying projects.

Sec. 2-370 – Guidelines for Unsolicited Proposals

The City of Brunswick adopts the Model Guidelines establish by the Public-Private Facilities and Infrastructure Act of 2015 to govern the process for receiving, reviewing and approving unsolicited proposals for qualifying projects.

A copy of such guidelines is maintained in the purchasing office of the City of Brunswick located at 601 Gloucester Street, Brunswick, Georgia 31525.

SECTION TWO:

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

SECTION THREE:

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION FOUR:

This Ordinance shall be effective immediately upon its adoption by the City Commission.

**SO ORDAINED BY THE CITY COMMISSION OF BRUNSWICK THIS _____
DAY OF _____, 2019.**

Cornell L. Harvey, Mayor

ATTEST: _____
Naomi Atkinson, City Clerk