

ORDINANCE NO. 2021-02

AN ORDINANCE AMENDING THE PROCUREMENT CODE OF THE CITY OF BARNWELL CODE

WHEREAS, the staff of the City of Barnwell has recently performed a review of the procurement code and recommends that the amendments to the Barnwell City Code which are more particularly set forth in Exhibit "A" which is attached hereto and incorporated herein by reference be adopted by City Council; and

WHEREAS, the Council of the City of Barnwell has reviewed these amendments and finds them to be appropriate revisions to the Barnwell City Code; and

WHEREAS, the Council of the City of Barnwell has concluded that the adoption of the proposed amendments to the Barnwell City Code is essential to the general health, safety, welfare and economic stability of the City and is in the best interest of its citizens.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BARNWELL HEREBY ORDAINS THAT:

Section 1: Chapter 2 of the Barnwell City Code is hereby amended to add Section 2-281 which shall read as set forth in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2: This ordinance shall become effective upon adoption by the Council of the City of Barnwell.

Section 3: In the event that any provision of this Ordinance, or any part thereof, or any application thereof to any person or circumstance, is for any reason held to be unconstitutional or otherwise invalid or ineffective by any court of competent jurisdiction on its face or as applied, such holding shall not affect the validity or effectiveness or any of the remaining provisions of this Ordinance, or any part thereof, or any application thereof to any person or circumstance or of said provision as applied to any other person or circumstance. It is hereby declared to be the legislative intent of the City that this Ordinance would have been adopted had such unconstitutional, invalid, or ineffective provisions not been included herein.

ADOPTED by the Council of the City of Barnwell at its regular meeting held this 1 day of FEBRUARY, 2021, at which a quorum was present.

INTRODUCTION AND FIRST READING: 1-4-21

SECOND READING AND ADOPTION: 2-1-21


MAYOR

APPROVED:


CITY ATTORNEY

ATTEST:


CITY CLERK


CITY COUNCIL MEMBER


CITY COUNCIL MEMBER


CITY COUNCIL MEMBER


CITY COUNCIL MEMBER


CITY COUNCIL MEMBER


CITY COUNCIL MEMBER

Exhibit "A"

Sec. 2-281. Construction

Subarticle 1. Definitions

"Construction manager agent" means a business that has been awarded a separate contract with the City to provide construction management services but not construction.

"Construction manager at-risk" means a business that has been awarded a separate contract with the City 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.

"Construction management services" are those professional services associated with contract administration, project management, and other specified services provided in connection with the administration of a project delivery method defined in this Section 2-281.

"Construction management at-risk" means a project delivery method in which the City 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.

"Design-bid-build" means a project delivery method in which the City 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.

"Design-build" means a project delivery method in which the City enters into a single contract for design and construction of an infrastructure facility.

"Design-build-operate-maintain" means a project delivery method in which the City 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 (1) appropriated by the City, (2) secured by the City through fare, toll, or user charges, (3) provided in the form of a concession agreement with the contractor or an assignee, or (4) any combination of the foregoing.

"Infrastructure facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment, or portion thereof.

"Operations and maintenance" means a project delivery method in which the City enters

into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

Subarticle 2. Construction Services authorization.

1. Project delivery methods authorized.

(1) 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.

(2) In addition to those methods identified in item (1), the Council may approve as an alternate project delivery method any combination of design, construction, finance, and services for operations and maintenance of an infrastructure facility.

(3) Participation in a report or study that is later used in the preparation of design requirements for a project does not disqualify a firm from participating as a member of a proposing team in a construction management at-risk, design-build, or design-build-operate-maintain delivery procurement, unless the participation provides the business with a substantial competitive advantage.

2. Choice of project delivery method.

The project delivery method used for a City construction project must be that method which is most advantageous to the City and results in the most timely, economical, and successful completion of the construction project. The City 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.

3. Source selection methods assigned to project delivery methods.

(1) Competitive sealed bidding, as provided in this code, must be used to procure construction in design-bid-build procurements.

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

(3) Operations and Maintenance. Contracts for operations and maintenance must be procured by either Competitive Sealed Bidding or Competitive Sealed Proposals.

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

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

(7) Other. Contracts for an alternate project delivery method approved by the Council must be procured by a source selection method specified by the Council when approving the alternative project delivery method.

(8) The procedures for receipt and evaluation of Competitive Sealed Proposals applicable to a solicitation will be outlined in that solicitation.

4. Prequalification on construction.

The City may limit participation in a solicitation for construction to only those businesses, including potential subcontractors, that are prequalified. If businesses are prequalified, the City must issue a request for qualifications. 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 protest.

5. Additional procedures applicable to procurement of certain project delivery methods.

(1) Evaluation Factors. A Request for Proposals for design-build or design-build-operate-maintain must:

(a) state the relative importance of (i) demonstrated compliance with the design requirements, (ii) offer or qualifications, (iii) financial capacity, (iv) project schedule, (v) price, or life-cycle price for design-build-operate-maintain (including the effects of proposed or alternative short- and long-term financing options), and (vi) other factors, if any.

Subarticle 3. Integration with Remainder of City Procurement Code

This Section 2-281 supplements the tools available to the City under Barnwell City Code, Division 2, Purchasing, but the specific provisions of this Section 2-281 in a procurement activity will supersede incompatible provisions of any other section of Barnwell City Code, Division 2, Purchasing. For example, but not by way of exhaustive listing: the use of Competitive Sealed Proposals is incompatible with provisions requiring award to "lowest bid" and the like (e.g., Secs. 2-268, -269, -270, -272(9)), but compatible general requirements such as advertising (Sec. 2-270), security and responsibility (Sec. 2-272 (6.b)) will apply to procurements under this Section 2-281.