



Special City Council Meeting

4:00pm, Tuesday, February 10, 2026

City Hall

Council Chambers

1207 Palm Boulevard, Isle of Palms, SC

Agenda

1. **Call to Order** and acknowledgement that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.
2. **Bid Appeal Hearing**
 - a. Staff presentation and Council questions (15 minutes)
 - b. Protestor presentation and Council questions (15 minutes)
 - c. Staff reply (5 minutes)
 - d. Protestor reply (5 minutes)
3. **Executive Session-** To receive legal advice concerning the protest pursuant to SC Code Section 30-4-70(a)(2).
4. **Deliberation of Council and consideration of the appeal**
5. **Concluding remarks**
6. **Adjournment**

January 20, 2026

VIA E-MAIL ONLY

Mr. Douglas Kerr
City Administrator / Purchasing Agent
City of Isle of Palms
P.O. Box 508
Isle of Palms, SC 29451

dkerr@iop.net

Re: Appeal of Contract Award for the Waterway Boulevard Pathway Project

Mr. Kerr:

This firm represents Quality Enterprises USA, Inc. ("QEUSA") in connection with the above-referenced solicitation. Pursuant to Section 1-10-10 of the City of Isle of Palms Purchasing Procedures (the "Purchasing Code"), we hereby submit this formal written appeal of the City's decision to award the contract for the Waterway Boulevard Pathway Project (RFB 2025.10) (the "Project") to Bastion Group instead of QEUSA.

In response to the City's solicitation, QEUSA submitted a timely, responsive bid on the Project in the amount of \$2,593,505.99. Upon opening of the bids, QEUSA was determined to be the lowest bidder on the Project. Despite submitting the lowest bid, the City elected to award the contract to Bastion Group, whose bid was \$2,890,156.00, which is \$296,650.01 higher than QEUSA's bid. QEUSA never received formal notice that the award was made to Bastion Group, but became aware of that intention on January 5, 2026, prior to the Special City Council Meeting on January 6, 2026.

Under Section 1-10-5(c)(12) of the Purchasing Code, the City is required to award contracts to the "lowest responsible bidder." When the award is not given to the lowest bidder, Section 1-10-5(c)(13) mandates that "a full and complete statement of the reasons for same shall be prepared or approved by the Purchasing Agent, filed with the documents relating to the transaction, and held for a period of not less than three (3) years."

The City's decision to bypass QEUSA's low bid and award the contract to a higher bidder was improper and is unsupported by the record.

First, QEUSA is a responsible bidder under all criteria set forth in the Purchasing Code. QEUSA is a full-service, national contractor that has been in business for more than 55 years. It has successfully completed numerous projects of similar size, scope, and complexity. QEUSA possesses all necessary licenses, certifications, and insurance required by law and by the terms of the solicitation. QEUSA has a proven track record of completing projects on time and within budget, and it has the personnel, equipment, and financial resources necessary to perform the work.

Second, to our knowledge, the City has not provided any statement of reasons explaining why it elected to bypass QEUSA's low bid in favor of a higher bidder. Under the Purchasing Code, such a statement is required. QEUSA formally requests that the City produce this statement, as well as all documents, evaluations, and correspondence relating to the evaluation of bids and the decision to award the contract to Bastion Group.

Third, absent a demonstrable, objective deficiency in QEUSA's responsibility under the factors enumerated in Section 1-10-5(c)(12) of the Purchasing Code, the City is obligated to award the contract to QEUSA as the lowest responsible bidder. The City's failure to do so constitutes a violation of its own Purchasing Code and deprives QEUSA of the benefit of its low bid.

For the foregoing reasons, QEUSA disputes the award of the contract to Bastion Group. QEUSA requests that the Purchasing Agent and City Council reverse the decision to award the contract to Bastion Group and award the contract to QEUSA instead, as the lowest responsible bidder. QEUSA further requests a copy of the full and complete statement of the reasons for awarding the contract to a higher bidder, as required by Section 1-10-5(c)(13) of the Purchasing Code, immediately, but certainly prior to any hearing that City Council may convene to hear this appeal. QEUSA reserves the right to supplement this appeal based on what may be included in the statement.

QEUSA further provides notice that it disputes the purported limitation of damages set forth in Section 1-10-10(d) of the Purchasing Code. The limitation violates QEUSA's constitutional rights pursuant to state and federal law, such as the right to due process, it does not comply with the requirements of the South Carolina Consolidated Procurement Code, and is an unfair and unenforceable limitation on an aggrieved party's right to a contract award pursuant to statute, and to recover damages flowing from an improper award.

Thank you for your attention to this matter, and please provide confirmation of receipt of this appeal.

Harper Warnock Weatherholtz & Wilson, LLC



James E. Weatherholtz, Partner

cc: Mr. Lou Gaudio (via e-mail)
Mac McQuillin (via e-mail) mmcquillin@hsblawfirm.com

CITY OF ISLE OF PALMS

South Carolina



MEMORANDUM

TO: City Council

FROM: Douglas Kerr, City Administrator 

RE: Waterway Boulevard flood barrier project

DATE: December 31, 2025

The City opened bids this morning for the second phase of this project. Four bids were received and the bid tabulation is attached.

Based on reviewing the bids with Thomas and Hutton, the staff is recommending that City Council consider awarding the work to Bastion Group LLC for an amount of \$2,890,156. The Bastion Group successfully completed the 41st Avenue outfall project ahead of schedule and below budget.

The total cost of the Waterway Boulevard flood barrier is expected to be \$6,354,667 (\$5,842,967 construction and \$511,700 engineering and design).

To date, the city has authorized \$1,839,511 (\$1,437,811 construction of phase 1 and \$401,700 engineering and design).

A third and final phase is anticipated next winter and is expected to cost \$1,625,000 (1,515,000 construction and 110,000 engineering and design).

The staff recommends paying for this project with the following sources:

FEMA grant:	\$980,000
SC budget allocation:	\$1,250,000
NPDES funds:	\$1,600,000
City capital fund:	<u>\$2,524,667</u>
TOTAL	\$6,354,667



City of Isle of Palms
Waterway Blvd Pathway
Detailed Bid Tabulation

=today()

ITEM	DESCRIPTION	QUANTITY		Truluck Construction		Low Country Site Works		Bastion Group		Quality Enterprises	
		NUMBER OF UNITS	UNIT MEASURE	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST
General											
1	Mobilization	1	LS	\$ 120,066.00	\$ 120,066.00	\$ 280,000.00	\$ 280,000.00	\$ 100,000.00	\$ 100,000.00	\$ 363,080.00	\$ 363,080.00
2	Construction Staking	1	LS	\$ 16,550.00	\$ 16,550.00	\$ 35,000.00	\$ 35,000.00	\$ 20,000.00	\$ 20,000.00	\$ 36,578.00	\$ 36,578.00
3	Traffic Control	1	LS	\$ 90,000.00	\$ 90,000.00	\$ 103,350.00	\$ 103,350.00	\$ 18,000.00	\$ 18,000.00	\$ 35,806.00	\$ 35,806.00
4	Erosion Conrol	1	LS	\$ 62,136.00	\$ 62,136.00	\$ 150,000.00	\$ 150,000.00	\$ 78,500.00	\$ 78,500.00	\$ 36,252.00	\$ 36,252.00
5	As-Built Construction Plans	1	LS	\$ 8,500.00	\$ 8,500.00	\$ 5,000.00	\$ 5,000.00	\$ 12,000.00	\$ 12,000.00	\$ 9,144.00	\$ 9,144.00
Earthwork											
6	Selected Clearing and Grubbing	2.4	AC	\$ 25,000.00	\$ 60,000.00	\$ 25,000.00	\$ 60,000.00	\$ 7,650.00	\$ 18,360.00	\$ 13,797.08	\$ 33,112.99
7	Milling Existing Asphalt Pavement	1,770	SY	\$ 10.00	\$ 17,700.00	\$ 10.00	\$ 17,700.00	\$ 11.55	\$ 20,443.50	\$ 18.00	\$ 31,860.00
8	Removal & Disposal of Existing Pavement	6,605	SY	\$ 17.00	\$ 112,285.00	\$ 8.00	\$ 52,840.00	\$ 11.65	\$ 76,948.25	\$ 17.00	\$ 112,285.00
9	Removal & Disposal of Existing Concrete	600	SY	\$ 12.00	\$ 7,200.00	\$ 9.00	\$ 5,400.00	\$ 20.15	\$ 12,090.00	\$ 30.00	\$ 18,000.00
10	Controlled Fill - Borrow Material	750	CY	\$ 55.00	\$ 41,250.00	\$ 70.00	\$ 52,500.00	\$ 49.95	\$ 37,462.50	\$ 47.00	\$ 35,250.00
11	Grading	11,300	SY	\$ 11.00	\$ 124,300.00	\$ 18.00	\$ 203,400.00	\$ 5.95	\$ 67,235.00	\$ 3.00	\$ 33,900.00
Roadway and Pathway											
12	Graded Aggregate Base Course (8" Roodads and Driveways)	2,171	SY	\$ 35.00	\$ 75,985.00	\$ 35.00	\$ 75,985.00	\$ 45.00	\$ 97,695.00	\$ 55.00	\$ 119,405.00
13	Graded Aggregate Base Course(4" for Pathway)	7,715	SY	\$ 21.50	\$ 165,872.50	\$ 22.00	\$ 169,730.00	\$ 22.65	\$ 174,744.75	\$ 32.00	\$ 246,880.00
14	Hot Mix Asphalt Intermediate Course Type B	244	TON	\$ 200.00	\$ 48,800.00	\$ 160.00	\$ 39,040.00	\$ 223.00	\$ 54,412.00	\$ 277.00	\$ 67,588.00
15	Hot Mix Asphalt Surface Course Type B	1,145	TON	\$ 230.00	\$ 263,350.00	\$ 160.00	\$ 183,200.00	\$ 223.00	\$ 255,335.00	\$ 302.00	\$ 345,790.00
16	Concrete Curb and Gutter (1'-6") Vertical Face	367	LF	\$ 50.00	\$ 18,350.00	\$ 45.00	\$ 16,515.00	\$ 72.00	\$ 26,424.00	\$ 44.00	\$ 16,148.00
17	Defectable Warning Surface	385	SF	\$ 65.00	\$ 25,025.00	\$ 35.00	\$ 13,475.00	\$ 54.00	\$ 20,790.00	\$ 37.00	\$ 14,245.00
18	Concrete Driveway (6")	550	SY	\$ 90.00	\$ 49,500.00	\$ 100.00	\$ 55,000.00	\$ 113.00	\$ 62,150.00	\$ 81.00	\$ 44,550.00
19	Gravel Drive (3-in thick including geotextile and timber rails)	200	SY	\$ 35.00	\$ 7,000.00	\$ 50.00	\$ 10,000.00	\$ 40.80	\$ 8,160.00	\$ 178.00	\$ 35,600.00
Striping											
20	4" White Solid Lines (Pvt. Edge Lines) Thermo 90 MIL	870	LF	\$ 4.00	\$ 3,480.00	\$ 2.00	\$ 1,740.00	\$ 3.00	\$ 2,610.00	\$ 3.00	\$ 2,610.00
21	24" White Solid Lines (Stop/Diagonal Lines) Thermo 125 MIL	100	LF	\$ 26.00	\$ 2,600.00	\$ 5.00	\$ 500.00	\$ 17.70	\$ 1,770.00	\$ 7.00	\$ 700.00
22	8" White Solid Lines (Crosswalk) Epoxy Paint Slow Cure	540	LF	\$ 9.00	\$ 4,860.00	\$ 2.00	\$ 1,080.00	\$ 5.00	\$ 2,700.00	\$ 7.00	\$ 3,780.00
23	4" Yellow Solid Lines (Pvt. Edge No Passing Zone) Thermo 90 MIL	1,410	LF	\$ 4.00	\$ 5,640.00	\$ 2.00	\$ 2,820.00	\$ 3.00	\$ 4,230.00	\$ 4.00	\$ 5,640.00
24	Reset Sign	45	EA	\$ 200.00	\$ 9,000.00	\$ 250.00	\$ 11,250.00	\$ 142.00	\$ 6,390.00	\$ 61.00	\$ 2,745.00
Drainage											
25	15" RC Pipe	151	LF	\$ 225.00	\$ 33,975.00	\$ 225.00	\$ 33,975.00	\$ 142.00	\$ 21,442.00	\$ 153.00	\$ 23,103.00
26	18" RC Pipe	1,558	LF	\$ 200.00	\$ 311,600.00	\$ 225.00	\$ 350,550.00	\$ 158.00	\$ 246,164.00	\$ 185.00	\$ 288,230.00
27	Junction Box	2	EA	\$ 6,500.00	\$ 13,000.00	\$ 8,000.00	\$ 16,000.00	\$ 5,750.00	\$ 11,500.00	\$ 6,689.00	\$ 13,378.00
28	Manhole	1	EA	\$ 6,500.00	\$ 6,500.00	\$ 8,000.00	\$ 8,000.00	\$ 5,750.00	\$ 5,750.00	\$ 6,670.00	\$ 6,670.00
29	Catch Basin - Type 9	4	EA	\$ 6,900.00	\$ 27,600.00	\$ 8,000.00	\$ 32,000.00	\$ 5,750.00	\$ 23,000.00	\$ 5,361.00	\$ 21,444.00
30	Drop Inlet (24" x 36")	22	EA	\$ 6,200.00	\$ 136,400.00	\$ 8,000.00	\$ 176,000.00	\$ 5,750.00	\$ 126,500.00	\$ 5,445.00	\$ 119,790.00
31	Check Valve (15" In-Line) - Installation Only	1	EA	\$ 3,500.00	\$ 3,500.00	\$ 2,000.00	\$ 2,000.00	\$ 700.00	\$ 700.00	\$ 3,394.00	\$ 3,394.00
32	Check Valve (18" In-Line) - Installation Only	4	EA	\$ 3,500.00	\$ 14,000.00	\$ 2,000.00	\$ 8,000.00	\$ 700.00	\$ 2,800.00	\$ 6,579.00	\$ 26,316.00
33	Check Valve (24" In-Line) - Installation Only	1	EA	\$ 3,500.00	\$ 3,500.00	\$ 2,000.00	\$ 2,000.00	\$ 700.00	\$ 700.00	\$ 6,579.00	\$ 6,579.00
Water and Sewer Relocations											
33	Waterway Blvd. near 22 nd Ave. - 12" WM horiz. offset	1	LS	\$ 101,801.00	\$ 101,801.00	\$ 55,000.00	\$ 55,000.00	\$ 179,500.00	\$ 179,500.00	\$ 61,565.00	\$ 61,565.00
34	23 rd Ave. near Waterway Blvd - 8" WM vert. offset	1	LS	\$ 82,133.00	\$ 82,133.00	\$ 45,000.00	\$ 45,000.00	\$ 117,250.00	\$ 117,250.00	\$ 11,772.00	\$ 11,772.00
35	23 rd Ave. near Waterway Blvd - 8" FM vert. offset with ARV	1	LS	\$ 104,653.00	\$ 104,653.00	\$ 55,000.00	\$ 55,000.00	\$ 117,250.00	\$ 117,250.00	\$ 20,819.00	\$ 20,819.00
36	3107 Waterway Blvd. - 8" FM horz. offset	1	LS	\$ 91,898.00	\$ 91,898.00	\$ 55,000.00	\$ 55,000.00	\$ 95,200.00	\$ 95,200.00	\$ 13,197.00	\$ 13,197.00
37	Waterway Blvd. near 32 nd Ave. - 8" FM vert. offset with ARV	1	LS	\$ 104,653.00	\$ 104,653.00	\$ 55,000.00	\$ 55,000.00	\$ 117,250.00	\$ 117,250.00	\$ 20,569.00	\$ 20,569.00
38	3605 Waterway Blvd. - 8" FM vert. offset with ARV	1	LS	\$ 104,653.00	\$ 104,653.00	\$ 55,000.00	\$ 55,000.00	\$ 137,250.00	\$ 137,250.00	\$ 21,523.00	\$ 21,523.00
39	4001 Waterway Blvd. - 8" FM vert. offset with ARV	1	LS	\$ 104,653.00	\$ 104,653.00	\$ 55,000.00	\$ 55,000.00	\$ 137,250.00	\$ 137,250.00	\$ 21,263.00	\$ 21,263.00
40	Water Service Relocations/Replacements	6	EA	\$ 11,885.00	\$ 71,310.00	\$ 4,500.00	\$ 27,000.00	\$ 4,950.00	\$ 29,700.00	\$ 3,491.00	\$ 20,946.00
41	Adjust Sewer Manhole Ring & Cover with Concrete Collar	16	EA	\$ 650.00	\$ 10,400.00	\$ 3,500.00	\$ 56,000.00	\$ 1,250.00	\$ 20,000.00	\$ 2,000.00	\$ 32,000.00
42	8" Sewer in 16" Steel Casing	68	LF	\$ 1,537.00	\$ 104,516.00	\$ 650.00	\$ 44,200.00	\$ 1,785.00	\$ 121,380.00	\$ 323.00	\$ 21,964.00
Miscellaneous											
43	Sodding	7.25	MSY	\$ 13,500.00	\$ 97,875.00	\$ 15,000.00	\$ 108,750.00	\$ 12,800.00	\$ 92,800.00	\$ 10,860.00	\$ 78,735.00
44	CMU Wall - Fire Station	140	LF	\$ 300.00	\$ 42,000.00	\$ 200.00	\$ 28,000.00	\$ 238.00	\$ 33,320.00	\$ 245.00	\$ 34,300.00
Owner Controlled Allowance											
43	Miscellaneous	1	LS	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00

TOTAL BID: \$2,985,069.50 \$ 2,888,000.00 \$2,890,156.00 \$ 2,593,505.99

= corrected number

**BID TABULATION FOR
WATERWAY BOULEVARD PATHWAY
LOCATION : Isle of Palms, SC**



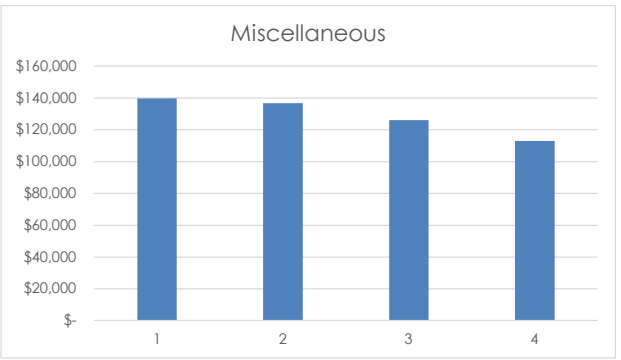
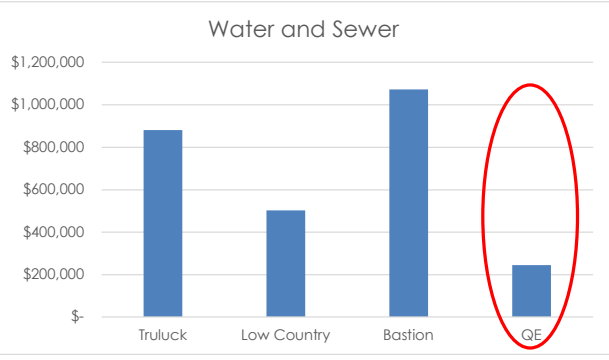
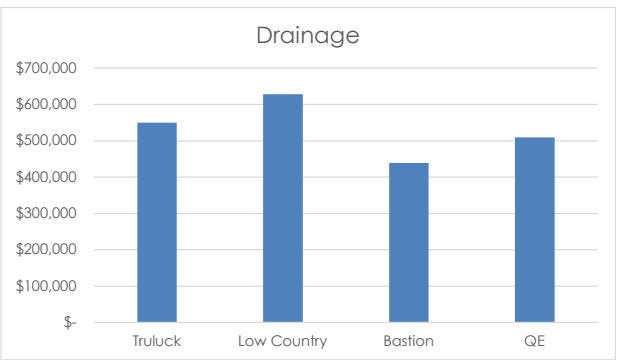
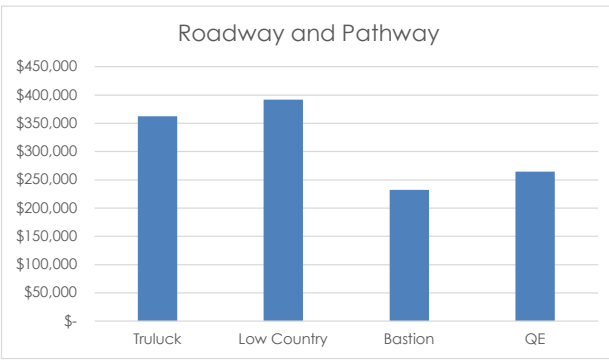
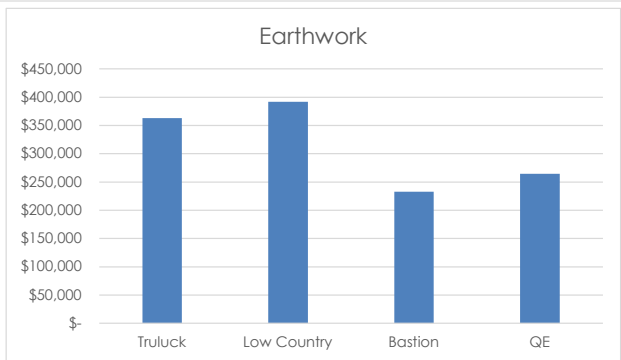
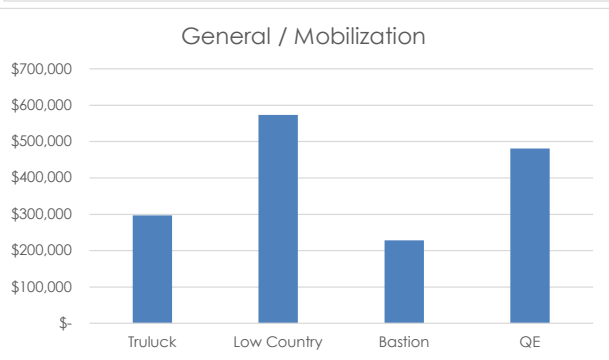
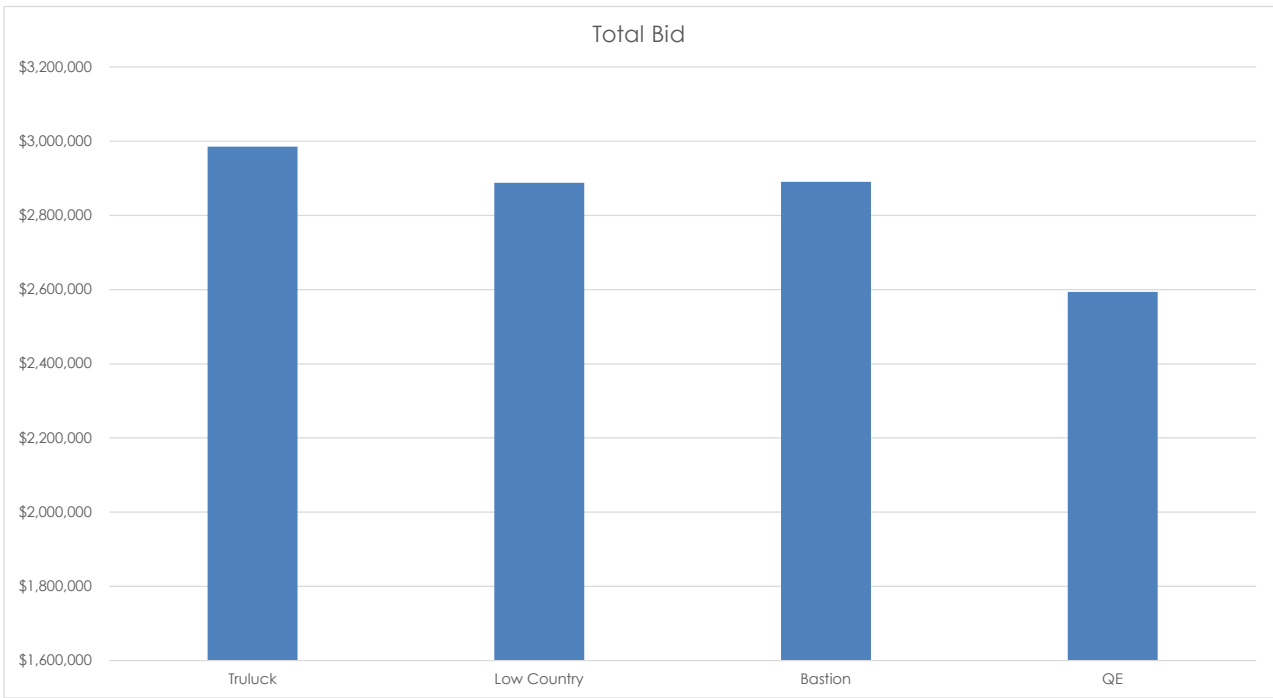
December 31, 2025

	OPCC
Engineers Estimate	\$ 2,884,400.00

	BID
Truluck Construction	\$ 2,985,069.50
Low Country Site Works	\$ 2,888,000.00
Bastion Group	\$ 2,890,156.00
Quality Enterprises	\$ 2,593,505.99

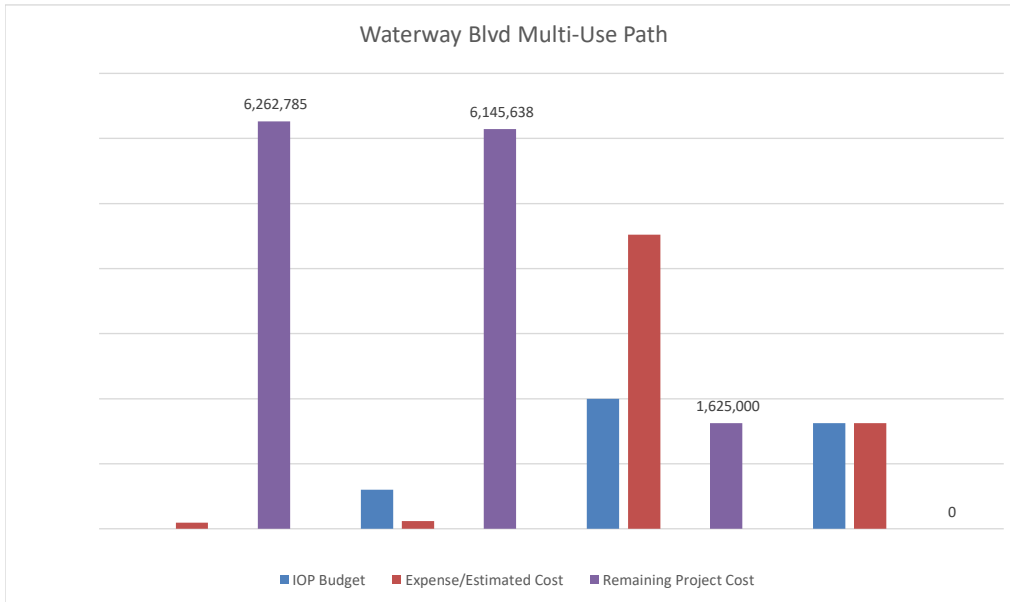
I hereby certify that this is a true and correct tabulation of bids received on the referenced project.

Engineer / License #
Thomas & Hutton Engineering Co.



City of Isle of Palm
Waterway Blvd Multi-Use Path Elevation

Category	ACTUAL FY24	ACTUAL FY25	FORECAST FY26	BUDGET FY27	Total
IOP Budget	-	600,000	2,000,000	1,625,000	4,225,000
Expense/Estimated Cost	91,882	117,147	4,520,638	1,625,000	6,354,667
Remaining Project Cost	6,262,785	6,145,638	1,625,000	0	



Note:

City awarded \$980K Grant from FEMA Hazard Mitigation Grant for construction, extension approved.

City will use SC State Budget grant for stormwater awarded in FY25 \$1,250M

City will use Approx \$1.6M of NPDES funds from county's allocation.

Total grant funding of \$3,830,000

Remaining balance of \$2,524,667 will be paid from capital fund.

Total Estimated Construction Cost		
Phase 1	Wild Dunes Harbor Course - Tidal Flood Mitigation	1,270,690
Phase 1	Wild Dunes Harbor Course - Tidal Flood Mitigation Check Valves	59,348
Phase 1A	3107, 3109, and 3111 Waterway Blvd - Tidal Flood Mitigation	85,773
Phase 1A	3107, 3109, and 3111 Waterway Blvd - Tidal Flood Mitigation Check Valves	22,000
Phase 2	Waterway Blvd -Pathway, Tidal Flood Mitigation & Drainage Improvements	2,890,156
Phase 3	3607, 3609, 3611, 3613 and 3615 Waterway Blvd - Tidal Flood Mitigation	1,515,000
Total Project		5,842,967

Thomas & Hutton Consulting/Engineering			
Original Budget	10/1/2023	Phase 1	156,700
Change Order 1	4/5/2024	Phase 1	14,500
Change Order 2	9/26/2024	Phase 1	67,000
Change Order 3	2/21/2025	Phase 1	5,000
Change Order 4	7/10/2025	Phase 2	83,500
Change Order 5	12/5/2025	Phase 2	75,000
Potential Future Cost		Phase 3	110,000
Total			511,700

Total Estimated Cost

6,354,667

January 20, 2026

VIA E-MAIL ONLY

Mr. Douglas Kerr
City Administrator / Purchasing Agent
City of Isle of Palms
P.O. Box 508
Isle of Palms, SC 29451

dkerr@iop.net

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Subject:

FW: IOP Waterway Blvd Pathway - Bid Tabulation

From: Douglas Kerr**Sent:** Wednesday, December 31, 2025 5:33 PM**To:** Ashley Carroll <acarroll@iop.net>; Bev Miller <bmiller@iop.net>; David Cohen <DCohen@iop.net>; Jimmy Ward <jward@iop.net>; John Bogosian <jbogosian@iop.net>; Katie Miars <kmiars@iop.net>; Phillip Pounds <ppounds@iop.net>; Rusty Streetman <rstreetman@iop.net>; Scott Pierce <spierce@iop.net>**Cc:** Sean Kuester <skuester@iop.net>; Nicole DeNeane <nicoled@iop.net>; Debra Hamilton <dhamilton@iop.net>; Karkowski, Rick <karkowski.r@tandh.com>**Subject:** FW: IOP Waterway Blvd Pathway - Bid Tabulation

You will notice in the email that was circulated earlier that the recommendation was not to award the next phase of the flood barrier work to the lowest apparent bidder. The city's procurement code requires that the work be awarded to the lowest *responsible* bidder- not the lowest bidder. For reasons itemized below, QE was deemed to not be the lowest responsible bidder.

The next lowest apparent bidder by a margin of \$2,156, Low Country Site Works, did not identify their water and sewer subcontractor in their bid, which was a requirement of the bid. Also, the disparity of cost in their bid for water and sewer work versus the others indicates they may have included place holders, as opposed to quoted work, that could be too low.

This results in Bastion Group being deemed the lowest responsible bidder. As explained in the memo, the city has had great experiences with this operation.

If Council were to award the work to Bastion Group, this explanation of the lowest responsible bidder will need to become part of the city's procurement file and kept for at least three years. You can read the section of the code dealing with competitive sealed bidding (Sec 1-10-5(C)) here:

https://library.municode.com/sc/isle_of_palms/codes/code_of_ordinances?nodeId=COOR_TIT1GOAD_CH10PUPR_S1-10-5MESOSE

Happy New Year!

Thanks, Douglas

Douglas Kerr
City Administrator
City of Isle of Palms
P.O. Drawer 508
Isle of Palms, SC 29451
(p) 843-886-6428
(c) 843-666-9326
(f) 843-886-8005

To submit service requests or sign up for city text alerts:
Text **"Hello"** to **(877) 607-6467**

Connect with IOP!



*** WARNING *** All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA).

From: Karkowski, Rick <karkowski.r@tandh.com>
Sent: Wednesday, December 31, 2025 4:57 PM
To: Douglas Kerr <dkerr@iop.net>
Cc: Valenzuela, Maria <valenzuela.m@tandh.com>; Aton, Hillary <aton.h@tandh.com>
Subject: RE: IOP Waterway Blvd Pathway - Bid Tabulation

Douglas,

I found the information on the difference in cost between RedValve and WaPro. The difference was \$140,442 (contractor savings). Slightly less than what I reported below, but still very significant.

Rick

RICK KARKOWSKI, PE, PH, D.WRE | Principal/Water Resources Manager
THOMAS & HUTTON
p 843-725-5280 m 843-708-1509
e karkowski.r@tandh.com
a 682 Johnnie Dodds Blvd.; Suite 100 | Mt. Pleasant, SC 29464
[vCard](#) | [Website](#) | [LinkedIn](#) | [Facebook](#) | [Instagram](#) | [YouTube](#)

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From: Karkowski, Rick
Sent: Wednesday, December 31, 2025 4:24 PM
To: Douglas Kerr (dkerr@iop.net) <dkerr@iop.net>
Cc: Valenzuela, Maria <valenzuela.m@tandh.com>; Aton, Hillary <aton.h@tandh.com>
Subject: IOP Waterway Blvd Pathway - Bid Tabulation

Dougals,

Attached is a draft of the tabulation spreadsheet. I did some graphs of cost groupings to show differences. Water and sewer utilities appears to be the major cost differential.

I also went back to the outfall projects (30th and Forest Trails) and summarized the change orders requested by QE.

1. Material/product substitution – RedValve check valves installed instead of the specified WaStop check valve – contractor savings approximately \$176,000 (need to confirm this number, but that is what I remember). Also, significant Engineer time also required.
2. Change orders 1-6 totaling: \$122,132.32
3. Change order 9 (CO 7-8 not used) QE requested : original: \$230,936.66, revised to \$238,227.76. Denied by Engineer. Appealed by Contractor. Settled for convenience at mediation for \$80,000 (?).

Total CO's requested \$536,360.00. Total CO's granted approximately \$378,132.32. QE was the low bidder for the project (\$2,270,822.51). The next lowest bidder was Gulf Stream at \$3,027,921.70 (a \$757,099.19 difference).

Bastion Group had no change orders on the 41st Ave. outfall project.

Truluck Marine had no contractor-initiated change orders on the Phase 1 work for the pathway (Wild Dunes Golf Course). All 3 CO were owner requested.

Have a happy new year. I will be in the office Friday morning if you would like to talk.

Rick

RICK KARKOWSKI, PE, PH, D.WRE | Principal/Water Resources Manager

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CHAPTER 10. PURCHASING PROCEDURES¹

Sec. 1-10-1. Purchasing agent; specified duties.

The City Administrator or City Administrator's designee shall serve as the Purchasing Agent for the City. The Purchasing Agent shall be responsible for and supervise:

- (a) The purchase of supplies, materials and equipment and contractual services required by any office, department or agency of the City.
- (b) The storage and distribution of all supplies, materials and equipment required by any office, department or agency of the City.
- (c) Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any office, department or agency of the City. Such specifications shall be definite and certain.
- (d) Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in storerooms or warehouses.
- (e) Obtaining as full and open competition as practical on all purchases, contracts and sales.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-2. Formal contract procedure.

Except as otherwise provided herein, all expenditures exceeding \$25,000.00 shall be made by formal written contract. Any expenditure not exceeding the amount of \$25,000.00 may be made in accordance with small purchase procedures promulgated by the Purchasing Agent; provided, however, that no contract or purchase shall be subdivided to avoid the requirements of this section.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-3. Approval of expenditures, sales and contract assignments.

- (a) Council approval shall be required for the following expenditures, sales and contract assignments:
 - (1) Unbudgeted expenditures in excess of \$10,000.00;
 - (2) All expenditures in excess of \$25,000.00;
 - (3) All sales of personal property when the estimated value exceeds \$10,000.00; and
 - (4) Assignments of contracts in excess of \$10,000.00.

¹Editor's note(s)—Ord. No. 2017-01, § 1, adopted Feb. 28, 2017, repealed the former Ch. 10, §§ 1-10-1—1-10-15, and enacted a new Ch. 10 as set out herein. The former Ch. 10 pertained to similar subject matter and derived from Ord. No. 2004-2, § 1(1-10-1—1-10-15), adopted April 27, 2004; Ord. No. 2005-1, § 1, adopted March 22, 2005; and Ord. No. 2013-11, § 1, adopted Oct. 22, 2013.

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- (b) The Purchasing Agent may authorize the following expenditures, sales and contract assignments without Council approval:
- (1) All expenditures of \$10,000.00 or less;
 - (2) Purchases of gasoline, which otherwise comply with the terms of this chapter, in amounts not to exceed \$25,000.00;
 - (3) All sales of personal property when the estimated value is \$10,000.00 or less; and
 - (4) Assignments of contracts that are \$10,000.00 or less.
- (c) The Purchasing Agent may also authorize any budgeted expenditure approved in the current fiscal year's budget, where the price does not exceed the budget estimate by more than ten percent (10%), if the total expenditure does not exceed \$25,000.00. The Purchasing Agent shall submit a report of the expenditure to City Council which shall be entered in the minutes of Council.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-4. Competitive procurement requirements; exceptions.

- (a) *When required.*
- (1) Expenditures of \$5,000.00 or less: Competitive procurement is not required for expenditures of \$5,000.00 or less if prices are considered by the Purchasing Agent or Department Head to be fair and reasonable.
 - (2) Expenditures exceeding \$5,000.00: Before any purchases or contracts for supplies, materials, equipment or services exceeding \$5,000.00 are made, the Purchasing Agent or Department Head shall give reasonable opportunity for competitive procurement.
 - (i) For purchases or contracts in excess of \$5,000.00 but not more than \$10,000.00, the Purchasing Agent or Department Head shall obtain either verbal or written competitive price quotes from at least two (2) vendors, unless only one (1) vendor is available. Informal quotes may be accepted verbally or via email, provided that the Purchasing Agent or Department Head retains appropriate documentation consisting of the name of the vendor, price quote, name of vendor's representative providing the quote, and the date of quote.
 - (ii) For purchases or contracts in excess of \$10,000.00 but not more than \$25,000.00, the Purchasing Agent or Department Head shall obtain at least three (3) informal written bids, unless three (3) vendors are not available. Informal written bids may be accepted via email.
 - (iii) Purchases or contracts in excess of \$25,000.00 shall be awarded pursuant to the formal competitive sealed bidding or competitive sealed proposals methods as provided in section 1-10-5, unless otherwise provided in this chapter.
 - (3) No contract or purchase shall be subdivided to avoid the competitive procurement requirements of this section.
 - (4) The Purchasing Agent or City Council has the authority to cancel a request for bids or proposals or other solicitation, and to reject any or all bids or proposals in whole or in part, and to waive informalities or irregularities in bids or proposals received when it is determined to be in the best interest of the City.
- (b) *Exceptions.*

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- (1) In the event of any emergency affecting the public welfare, health or safety, the competitive procurement requirements of this section shall not apply. A full report of any emergency purchase shall be filed by the Purchasing Agent with City Council and shall be entered in the minutes of Council.
 - (2) The competitive procurement requirements of this section shall not apply to the procurement of professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding such as legal, medical, consulting, appraiser, auditor or accounting services. The Purchasing Agent may secure professional services by direct negotiation and selection, taking into account the type of services required, the proximity (location) of the professional providing the services, the capability of the professional to produce the required service within a reasonable time, past performance, and the ability to meet budget requirements. Nothing herein shall be deemed to prohibit the City from using competitive procurement procedures for professional services if City Council determines it is in the best interests of the City.
 - (3) The following types of expenditures are exempt from the competitive procurement requirements of this section:
 - (i) Utilities including gas, electric, water and sewer;
 - (ii) Information technology;
 - (iii) Maintenance and repairs to vehicles, machinery or equipment necessary in providing an essential City service;
 - (iv) Maintenance or service contracts which are made with the manufacturer or authorized service agent;
 - (v) Replacement parts of existing equipment supplied by the original equipment manufacturer or authorized dealer;
 - (vi) Routine, recurring purchases (e.g., office supplies);
 - (vii) Works of art and holiday decorations for public display;
 - (viii) Competitive online bidding, including, but not limited to, reverse auctions.
 - (ix) Corrective work necessary for repairing or replacing faulty or defective workmanship, design or materials, as determined by the Purchasing Agent.
 - (4) An expenditure may be made without competitive procurement when the Purchasing Agent reasonably determines that there is only one (1) qualified source for the required goods or services, or that a particular source has a unique ability or knowledge with respect to the required goods or services, or when there is only one (1) source which is compatible with existing equipment, software, systems, or services and the Purchasing Agent sets forth such determination and the basis therefor in a written statement submitted to City Council and entered in the minutes of Council.
 - (5) An expenditure may be made without competitive procurement when an item is required for trial use or testing. The Purchasing Agent shall set forth such determination and the basis therefor in a written statement submitted to City Council and entered in the minutes of Council.
 - (6) The Purchasing Agent may obtain goods and services from an awarded bidder in a competitive bidding process utilized within the preceding twelve (12) months by another political subdivision of the state for substantially the same goods or services when the Purchasing Agent has good reason to believe that the awarded bidder is the lowest qualified bidder at the time the City obtains such goods and services.
 - (7) Competitive procurement shall not be required for goods and services purchased through a state contract awarded by the purchasing division of the State of South Carolina, or when an item that is

equivalent or superior to a state contract item is purchased at a price equal to or less than the state contract price.

- (8) An expenditure may be made without competitive procurement when it is determined by the Purchasing Agent that the expenditure is critical to the City and time does not permit for solicitation or resolicitation in accordance with the procedures set forth in this chapter. The Purchasing Agent shall set forth such determination and the basis therefor in a written statement submitted to City Council and entered in the minutes of Council.
- (9) The approval requirements set forth in section 1-10-3 shall apply to the expenditures listed in each exception hereinabove; provided, however, that City Council approval shall not be required for emergency purchases pursuant to paragraph (b)(1) of this section.

(Ord. No. 2017-01, § 1, 2-28-2017; Ord. No. 2018-12, §§ 1—3, 7-24-2018)

Sec. 1-10-5. Methods of source selection.

(a) *Definitions.*

- (1) *Request for information (RFI)* shall mean an informal request for information on potential vendors or service providers to determine what products and services are available and the capabilities of the vendors/providers in terms of offerings and strengths for the purpose of developing a future procurement process, developing strategy, and/or building a database. The RFI is not a procurement method and does not result directly in the award of a contract. In the event that sufficient information is received, the City may, but is not obligated to, initiate a competitive bidding opportunity. No contractual obligation whatsoever on behalf of the City shall arise from the RFI process.
- (2) *Request for bids (RFB)* shall mean a formal request to prospective vendors soliciting price quotations or bids.
- (3) *Request for proposals (RFP)* shall mean a formal solicitation for proposals based on a generalized scope of work with contract award to the responsible person(s) submitting the most advantageous and responsive proposal.
- (4) *Request for qualifications (RFQ)* shall mean a formal solicitation for professional/technical capabilities.
- (b) *Request for information (RFI)*. A request for information may be used prior to the issuance of a request for bids (RFB), request for proposals (RFP), or request for qualifications (RFQ) for any contract for City improvements, materials, equipment, or services costing more than \$25,000.00, if requested by City Council.

(c) *Competitive sealed bidding.*

- (1) *Conditions for use.* Except as otherwise provided in this chapter, all contracts for City improvements, materials, equipment, or services costing more than \$25,000.00 shall be awarded by competitive sealed bidding.
- (2) *Request for bids (RFB).* A request for bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.
- (3) *Public notice.* Public notice of the invitation for bids shall be published in a newspaper of general circulation in the City and on the City's website at least five (5) days before the last day set for receipt of bids. The newspaper notice required herein shall include a general description of the articles or services to be purchased, state where bid forms and specifications may be secured, and the time and place for opening of sealed bids. In the event that, after advertising as aforesaid, no bids are received, the Purchasing Agent shall, with approval of the City Council, solicit bids by mail, telephone,

newspaper, posting on the City's website, or by any other reasonable manner to secure responsible bidders.

- (4) *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.
- (5) *Opening.* Bids shall be opened in public in the presence of one (1) or more witnesses at the time and place stated in the public notices.
- (6) *Tabulation.* A tabulation of all bids received shall be available for public inspection.
- (7) *Rejection of bids.* The Purchasing Agent or City Council has the authority to reject all bids, parts of all bids, or all bids for any one (1) or more supplies or contractual services included in the proposed contract.
- (8) *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, licenses, or other monies due to the City.
- (9) *Right to waiver.* The City has the right, but not the obligation, to waive informalities or irregularities in a bid received and allow the bid to be considered.
- (10) *Bid instructions.* Bid instructions shall be prepared or approved by the Purchasing Agent. In the event of a conflict between the bid instructions and this chapter, the provisions of this chapter shall control.
- (11) *Pre-qualification.* When it is considered impracticable to initially prepare a purchase description to support an award based on price, an invitation for proposals may be issued requesting the submission of unpriced offers to be followed by an invitation for bids complete with cost and pricing information limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- (12) *Award.* Contracts shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, the Purchasing Agent and City Council shall consider:
 - (i) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - (ii) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - (iii) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - (iv) The quality of performance of previous contracts or services;
 - (v) The previous and existing compliance by the bidder with laws and ordinances relating to the contracts or services;
 - (vi) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - (vii) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
 - (viii) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - (ix) The number and scope of conditions attached to the bid;
 - (x) The ability of the bidder to meet the specifications or to offer an acceptable alternative equivalent.

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- (13) *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 same shall be prepared or approved by the Purchasing Agent, filed with the documents relating to the transaction, and held for a period of not less than three (3) years.
- (14) *Tie bids.* If two (2) or more bidders submit the low bid, quality and service being equal, the contract shall be awarded to the local bidder. If two (2) or more of such bids are submitted by local bidders, the contract shall be awarded to one (1) of the local 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 (1) of the outside tie bidders by drawing lots in public.
- (15) *Bid deposits.* The Purchasing Agent or City Council shall have the authority to require a bid deposit, which shall be prescribed in the public notices inviting sealed bids. Upon entering into a contract, bidders shall be entitled to return of a required bid deposit. The City shall retain a successful bidder's bid deposit upon failure of bidder to enter into a contract within thirty (30) days after the award; provided, however, that the City Council, in its sole discretion, may waive this forfeiture.
- (16) *Performance bonds.* The Purchasing Agent or City Council shall have the authority to require a performance bond before entering into a contract, in such form and amount as the Purchasing Agent or City Council deems reasonably necessary to protect the best interest of the City. The requirement of a performance bond shall be stated in any bid instructions.
- (17) *Payment bond/labor and material bond.* The Purchasing Agent or City Council may require a payment bond and labor and material bond, before entering into a contract, in such form and amount as the Purchasing Agent deems reasonably necessary to protect the best interest of the City. The requirements of such bonds shall be stated in any bid instructions.
- (18) *Negotiations authorized.*
- (i) Generally, sealed bids are not negotiated, but in the event that all bids are rejected because of the amount of the bid, the Purchasing Agent is authorized in situations where the City's best interest precludes resolicitation of bids of a reduced scope, to negotiate an adjustment in the bid price of the lowest responsible bidder, including changing the bid specifications, in order to bring the bid within the amount of funds deemed by the Purchasing Agent or City Council to be available for the contract. If such negotiations are unsuccessful, the Purchasing Agent is authorized to enter into new negotiations with the next lowest responsible bidder, and likewise the third and sequential bidders until a bid price acceptable to the City is obtained. If the Purchasing Agent is unsuccessful in the first round of negotiations, negotiations may be reopened with any bidder with whom negotiations have occurred. If a contract is still not able to be negotiated, the scope of the request for bids may be changed in an effort to reduce the cost to a fair, reasonable and acceptable amount and all responsive bidders must be allowed to submit their best and final offers/bids.
 - (ii) When all bids received are rejected and are not successfully negotiated as provided by subsection (ii) of this section and it is determined by the Purchasing Agent or City Council that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated provided that:
 - 1. Each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
 - 2. The negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation; and
 - 3. The negotiated price is the lowest negotiated price offered by any responsible and responsive bidder.

(d) *Competitive sealed proposals.*

- (1) *Conditions for use.* When the Purchasing Agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract for City improvements, materials, equipment, or services costing more than \$25,000.00 may be awarded by competitive sealed proposals.
- (2) *Request for proposals (RFP).* Proposals shall be solicited through a formal request for proposals.
- (3) *Public notice.* Public notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding.
- (4) *Sealing.* Proposals shall be submitted to the Purchasing Agent securely sealed in an envelope, and shall be identified on the envelope in accordance with the instructions in the request for proposals.
- (5) *Proposal opening.* Proposals shall be publicly opened in the presence of one (1) or more witnesses at the time and place stated in the public notices. Only the names of the offerors shall be disclosed at the proposal opening. Contents of competing offerors shall not be disclosed during the process of review and discussions. Proposals shall be for public inspection after contract award. Proprietary or confidential information marked as such in each proposal shall not be disclosed without written consent of the offeror. Late proposals shall neither be opened nor considered for award; however, the name and address of the late offeror and the time of attempted delivery shall be recorded wherever practicable.
- (6) *Rejection of bids.* The Purchasing Agent or City Council has the authority to reject all proposals, parts of all proposals, or all proposals for any one (1) or more supplies or contractual services included in the proposed contract.
- (7) *Bidders in default to City.* The Purchasing Agent shall not accept the proposal of a vendor or contractor who is delinquent in the payment of taxes, licenses, or other monies due to the City.
- (8) *Right to waiver.* The City has the right, but not the obligation, to waive informalities or irregularities in a proposal received and allow the proposal to be considered.
- (9) *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 responsiveness 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.
- (10) *Evaluation factors.* The request for proposals shall state the evaluation factors and, if necessary, the relative importance of price and of each other evaluation factor.
- (11) *Negotiations with preferred offeror.* After proposals have been evaluated, negotiations may be held with the preferred offeror in an effort to reach terms advantageous to the City. Notwithstanding this provision, requests for proposals may incorporate contract terms to which all offerors shall be expected to adhere.
- (12) *Award.* Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the City taking into consideration the evaluation factors set forth in the request for proposals and any addenda thereto. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

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- (13) *Performance bonds.* The Purchasing Agent or City Council shall have the authority to require a performance bond before entering into a contract, in such form and amount as the Purchasing Agent or City Council deems reasonably necessary to protect the best interest of the City. The requirement of a performance bond shall be stated in the request for proposal.
 - (14) *Payment bond/labor and material bond.* The Purchasing Agent or City Council may require a payment bond and labor and material bond, before entering into a contract, in such form and amount as the Purchasing Agent deems reasonably necessary to protect the best interest of the City. The requirements of such bonds shall be stated in the request for proposal.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-6. Construction contracting.

- (a) The Purchasing Agent may recommend the appropriate method of construction contracting for a particular project. In determining which method to recommend, the Purchasing Agent shall consider the City's requirements, the scope of the project, its resources, and the potential contractor's capabilities.
- (b) City Council finds that certain non-traditional means of public construction project management, such as construction management services, design-build services, or turnkey management services, can be in the best interests of the City in certain circumstances. Such services allow for the selection of a single business to perform and manage the complete design and construction of a project. Therefore, the following methods may be employed under the following circumstances:
 - (1) The Purchasing Agent shall have the discretion to use construction management services, design-build services, or turnkey management services as alternatives for construction contracting administration. In exercising such discretion, the Purchasing Agent shall consider the method which, in the Purchasing Agent's discretion, is the most advantageous to the City and will result in the most timely, economical, and successful completion of the construction project.
 - (2) If the Purchasing Agent determines that the use of construction management services, design-build services or turnkey management services is the most advantageous means of securing the construction contracting administration as set forth in paragraph (b)(1) of this section, and the amount of services to be secured thereby is anticipated to exceed \$500,000.00, the selection of the method of construction contracting administration shall be submitted for review to the Ways and Means Committee of City Council. Within fifteen (15) days after notice of such review, an interested party shall submit to the Ways and Means Committee written comments which set forth the position of the party with respect to the decision as to which construction contracting method to use. At the next meeting of the Committee, which shall not occur until after at least fifteen (15) days following notice of such review, those who submitted comments may address the Committee. Following the meeting of the Committee, if City Council does not reject the selection of this method, the construction contracting administration shall be secured in the manner set forth in paragraph (b)(3) of this section.
 - (3) The City shall use the competitive sealed proposal method set forth in this chapter for the purposes of procuring construction management services, design build services, or turnkey management services or any other similar type of construction management contract. The Purchasing Agent may retain outside consulting services to prepare such requests for proposals. The request for proposals for any of these services shall set forth the criteria which the City will be using to select the successful proposal.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-7. Architect-engineering services.

- (a) *Definition.* As used in this section "architect-engineering services" shall mean those professional services associated with the practice of architecture, professional engineering, landscape architecture, and interior design pertaining to construction, as defined by the laws of this State, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.
- (b) *Request for qualifications (RFQ).* Contracts shall be awarded by request for qualifications for architect-engineering services.
- (c) *Public announcement.* It is the policy of the City to publicly announce all requirements for architect-engineering services through a request for qualifications and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement of such services, the Purchasing Agent shall request firms to submit a statement of qualifications and performance data.
- (d) *Selection process.* When practicable, the Purchasing Agent shall conduct discussions with no less than three (3) firms regarding the contract and shall select from among them no less than three (3) of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established by the Purchasing Agent.
- (e) *Negotiation.* The Purchasing Agent shall negotiate a contract with the highest qualified firm for architect-engineering services at a compensation which is considered to be fair and reasonable to the City. In making this decision, the Purchasing Agent shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The Purchasing Agent shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Agent shall formally terminate negotiations. The Purchasing Agent shall then undertake negotiations with the third most qualified firm. Should the Purchasing Agent be unable to negotiate a contract with any of the selected firms, the Purchasing Agent shall select additional firms in order of their competence and qualifications, and the Purchasing Agent shall continue negotiations in accordance with this section until an agreement is reached unless it is determined by the Purchasing Agent that in the best interests of the City, the process should be terminated or modified.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-8. Multi-term contracts.

Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the original solicitation and funds are available for the first fiscal period at the time of contracting. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled with no penalty to the City and such condition shall be included as a provision of the multi-term contract.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-9. Additional projects completed under existing contract terms.

Contracts may be awarded on projects without additional open competition and formal solicitation when:

- (a) The Purchasing Agent determines that it is a like and similar project to a project under a current contract which was the subject of open competition and formal solicitation by competitive sealed bidding or request for proposals, or was entered into by sole source in accordance with this chapter; and
- (b) The Purchasing Agent determines that it is the method most practicable and advantageous to the City; and
- (c) The Purchasing Agent determines that the project and scope of the project were identified with reasonable certainty in previous open competition or formal solicitation to ensure fair notice of potential additional work being the subject of the competition or solicitation and that there was fair competition to potential contractors; and
- (d) The Purchasing Agent sets forth such determination and the basis therefor in a written statement submitted to City Council and entered in the minutes of Council.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-10. Appeals.

Any actual or prospective bidder, offeror, contractor or subcontractor who is aggrieved in connection with the solicitation or award of a contract may appeal the award to the City Council. The appeal, setting forth the grievance, shall be submitted in writing to the Purchasing Agent within fifteen (15) days after such aggrieved person knew or should have known of the facts giving rise thereto.

- (a) *Hearing.* City Council shall convene and shall review and hear comments from the appellant and any other party intervening. The City Council's authority shall be rendered in a manner consistent with this chapter.
- (b) *Decision.* The Purchasing Agent shall give written notice of City Council's decision to the appellant within twenty (20) days of the rendering of the decision. City Council's decision shall state the reasons for the action taken.
- (c) *Finality of decision.* A decision rendered herein is considered final and conclusive. Such a decision is the final administrative review and the decision of the City which can be appealed to the County Court of Common Pleas.
- (d) *Limitation of damages; reimbursement for reasonable costs.* If an aggrieved bidder demonstrates to City Council, by a preponderance of the evidence, that such bidder should have been awarded a contract pursuant to this chapter, but was not, then such bidder may petition City Council for reimbursement of its actual costs, not to exceed \$5,000.00, incurred in connection with the solicitation, including bid preparation, which shall be such bidder's sole remedy at law or in equity for City's failure to award the contract to the bidder. Upon receipt of such petition, City Council may order the computation of a reasonable reimbursement amount and make such reimbursement as it deems equitable, including reimbursement of bid preparation costs, not to exceed the sum of \$5,000.00.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-11. 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 reasonably 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 or any outside laboratory.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-12. Financial interest of city officials and employees prohibited.

No member of 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, material, supplies or services. Strict compliance with S.C. Code 1976, §§ 5-7-130 and 5-21-30 is required of all City officials and employees. 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 Purchasing Agent or City Council. All Councilmembers and City officials shall also comply with all applicable state ethics laws regarding such contracts. This section is not intended to prohibit the award of contracts to City employees at public auction for the sale of City personal property or surplus supplies which have become obsolete, unusable or unsuitable for public use, provided that such sales are conducted in accordance with the conditions and requirements set forth in the City personnel manual and in conformance with the provisions of this chapter.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-13. Surplus property, materials and supplies.

- (a) All departments of the City shall submit to the Purchasing Agent, at such times and in such form as the Purchasing Agent deems appropriate, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.
- (b) Upon the approval of the Purchasing Agent, surplus stock may be transferred to other offices, departments or agencies of the City.
- (c) Upon the approval of the Purchasing Agent, all surplus property, materials, or supplies which have become obsolete, unusable, or unsuitable for public use may be sold, exchanged, or traded in on new supplies.
- (d) When the estimated value is \$10,000.00 or less, sales may be accomplished by any method that serves the best interest of the City as determined by the Purchasing Agent.
- (e) When the estimated value exceeds \$10,000.00, sales shall be made to the highest responsible bidder after a properly noticed solicitation of bids/proposals or public auction; provided, however, that property may be sold directly to another governmental agency without bids or public auction upon the approval of the Purchasing Agent.
- (f) All proceeds received from such sales shall be paid to the appropriate fund of the City.
- (g) Surplus property, materials, or supplies may be donated to another governmental agency or nonprofit entity upon the approval of the Purchasing Agent if the estimated value is \$10,000.00 or less or upon the approval of City Council if the estimated value exceeds \$10,000.00.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-14. Seized assets and unclaimed properties.

All seized assets and unclaimed properties, including, but not limited to, cars, bicycles, jewelry and other miscellaneous items, shall be disposed of in one (1) of the following procedures, subject to the approval of the Chief of Police or the Chief's designee, and in accordance with state law and the general orders and protocols established by the Police Department:

- (a) The City may place the property within the regular operating inventory of the City for use by the City.
- (b) When the estimated value is \$10,000.00 or less, sales may be accomplished by any method that serves the best interest of the City as determined by the Purchasing Agent.
- (c) When the estimated value exceeds \$10,000.00, sales shall be made to the highest responsible bidder after a properly noticed solicitation of bids/proposals or public auction; provided, however, that property may be sold directly to another governmental agency without bids or public auction upon the approval of the Purchasing Agent.
- (d) All proceeds from such sales shall be paid to the appropriate fund of the City.
- (e) The property may be donated to another governmental agency or nonprofit entity upon the approval of the Purchasing Agent if the estimated value is \$10,000.00 or less or upon the approval of City Council if the estimated value exceeds \$10,000.00.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-15. Gifts and rebates.

The Purchasing Agent and every other officer and employee of the City are expressly prohibited from accepting, directly or indirectly, from any person 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.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-16. Cooperative and intergovernmental purchasing.

The Purchasing Agent shall have the authority to join with other governmental units in cooperative purchasing plans and to enter into purchase contracts with other governmental units without the formality of publication and receiving competitive bids as otherwise required in this chapter when the best interest of the City would be served thereby.

(Ord. No. 2017-01, § 1, 2-28-2017; Ord. No. 2018-12, § 4, 7-24-2018)

Sec. 1-10-17. Compliance with federal requirements; compliance with disbursement and management requirements of financing documents.

Where a procurement involves the expenditure of federal assistance or contract funds, the Purchasing Agent shall comply with such federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in this chapter. Notwithstanding where requirements within this chapter are more restrictive, such federal requirements shall be followed.

Where a procurement involves the expenditure of funds, which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, the Purchasing Agent shall comply with the terms of

such financing as they relate to the disbursement of funds and/or management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this article. Notwithstanding where requirements within this chapter are more restrictive, such financing requirements shall be followed.

(Ord. No. 2017-01, § 1, 2-28-2017)

Sec. 1-10-18. Real property transactions.

(a) The following rules shall apply to the purchase and sale of City-owned real property:

- (1) The City shall sell, contract to sell, acquire by purchase, exchange or gift, real property only upon approval of City Council. At least one (1) appraisal by a certified appraiser shall be received.
- (2) A public hearing may be held at the discretion of City Council, after reasonable public notice, prior to final Council action being taken to sell or contract to sell real property owned by the City. Sale of real property may 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 City shall be made pursuant to the request for proposals method.
- (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) City Council shall retain the authority to determine an appropriate alternative method for offering any City-owned real property for sale.

(b) The following rules shall apply to the lease of real property by the City:

- (1) Subject to paragraph (3) below, the City shall contract to lease or sublease real property, or contract to lease real property owned by the City, only upon approval of City Council.
- (2) The request for proposals method may be used for the lease of real property owned by the City if City Council determines it is in the best interests of the City; provided, however, that renewals or amendments of existing leases shall not be subject to the request for proposals method.
- (3) A public hearing may be held at the discretion of City Council, after reasonable public notice, prior to final Council action being taken to contract to lease real property owned by the City. Lease of City-owned real property may not occur until approval of an ordinance upon second reading.

(Ord. No. 2017-01, § 1, 2-28-2017)