



CITY OF CHARLESTON West Virginia



Council Member – 12th WARD

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Finance Committee, Chair
Parking Committee, Chair
Public Safety Committee

AGENDA **FINANCE COMMITTEE MEETING** **Monday, November 4, 2019** **6:00 PM**

I. DISCUSSION:

- a. Approval of Previous Minutes - 10-21-2019
- b. Report from Subcommittee on Local Vendor Preference.

II. RESOLUTIONS:

- a. Resolution No. 255-19 - Authorizing the Mayor or City Manager to sign Change Order No. 1 with Garcie R. Marker & Sons, Inc. to repair approximately 4,500 square feet of additional concrete pavement on Court Street.
- b. Resolution No. 256-19 - Authorizing the Finance Director to establish Agency Fund 902, Coliseum & Convention Center Ticket Fund, a custodial account that accounts for revenues received from ticket sales for events held at the Coliseum & Convention.
- c. Resolution No. 257-19 - Authorizing the Finance Director to establish Agency Fund 903, Coliseum & Convention Promotions Fund, a custodial account that accounts for revenues received from customers for Coliseum & Convention Center sponsored and run events, and are subsequently dispersed and deposited to the Coliseum & Convention Center Revenue Fund after the events are over.
- d. Resolution No. 259-19 - Approval of FY 2020 Budget Amendment No. 4 – Creation of the Office of Constituent Services.

III. BILLS:

- a. Bill No. 7847 - A Bill to amend the Municipal Code of the City of Charleston by adding thereto two new sections, all relating to modernizing and clarifying the City of Charleston purchasing policies.

IV. THIS AGENDA WAS AMENDED 10-31-2019

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MINUTES
FINANCE COMMITTEE MEETING
6:30 P.M., OCTOBER 21, 2019
A/V CONFERENCE ROOM

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:30 p.m., September 21, 2019, in the Audio/Visual Room in City Hall.

A silent roll was taken by the Clerk and a quorum was established. The following committee members were present:

Joseph Jenkins, Chair
Bobby Reishman, Vice Chair
Brent Burton
Mary Beth Hoover
Will Laird
Shannon Snodgrass
Keeley Steele

I. DISCUSSION:

a. Councilmember Reishman asked for unanimous consent to dispense with the reading of the minutes for the October 7, 2019 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

II. RESOLUTIONS:

- a. Resolution No. 244-19 - A Resolution authorizing the Mayor or City Manager to accept two loans from the West Virginia Housing Development Fund (the "Lender") in the original principal amount of up to \$10,000 for the Organization Technical Assistance Program and up to \$20,000 for the Predevelopment Program (the "Loans") to be used to develop a comprehensive blight mapping project and housing infill architectural design templates to assist with blight removal and redevelopment across the entire City of Charleston; and

WHEREAS, in connection with the Loans, the City Of Charleston intends to execute and deliver a promissory note pursuant to which the Lender will extend the Loans to the City of Charleston, and certain other agreements, documents, instruments and certificates in connection with the foregoing, including a credit line deed of trust granting the Lender a lien on and security interest (all of the foregoing, including the promissory note and credit line deed of trust, are collectively referred to as the "Loan Documents").

Now Therefore, Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager be, and hereby is, authorized to negotiate the terms of, and execute, on behalf of the City, the Loan Documents, any amendments, supplements, modifications, extensions and renewals to the Loan Documents and any and all other documents contemplated by the terms of the Loan Documents which the Lender may request or require in connection with the consummation of the Loan.

FURTHER RESOLVED, that any and all actions taken by the Mayor or City Manager and any other properly authorized officers of the City in connection with the negotiation, preparation and execution of the Loan Documents prior to the date hereof are hereby ratified, affirmed and approved in all respects.

FURTHER RESOLVED, that the signature of the Mayor or City Manager to any of the Loan Documents shall be conclusive evidence of the authority of the Mayor or City Manager to execute and deliver such Loan Document on behalf of the City of Charleston.

Planning Director, Dan Vriendt, explained that the City was awarded 2 grants (that are forgivable loans) from the West Virginia Housing Development Fund. The first grant is for a web-based system that will integrate City data from multiple Departments into a single, GIS based platform. This is anticipated to greatly help the Charleston Land Reuse Program. The second grant is for templates for infill housing floor plans. The City will contract out for architectural services to develop floor plans to fit on 25 ft lots.

Councilmember Steele suggested that the plans be sustainable and energy efficient.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 244-19 approved.

- b. Resolution No. 252-19 - A Resolution authorizing the Mayor or City Manager to enter into an agreement with Municipal Leasing Consultants, in the amount of approximately \$615,000.00 for a three-year lease purchase period at a rate of 2.027% and approximately \$ 1,843,500 for a five-year lease purchase period at a rate of 2.027%, for the purchase of various vehicles and equipment for City departments subject to review and final approval by legal counsel for the City. The vendor was selected through a competitive bidding process.

Now Therefore, Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into an agreement with Municipal Leasing Consultants, in the amount of approximately \$615,000.00 for a three-year lease purchase period at a rate of 2.027% and approximately \$ 1,843,500 for a five-year lease purchase period at a rate of 2.027%, for the purchase of various vehicles and equipment for City departments subject to review and final approval by legal counsel for the City.

City Manager, Jonathan Storage, added that the purchase is part of an annual Capital Outlay financing package, which is how the City finances vehicles such as firetrucks, ambulances, dump trucks, etc. This will also include next year's purchase of CPD control vehicles. One bid not listed was determined to be non-responsive.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 252-19 approved.

Lease Purchase Agreement
Bid Opening: October 7, 2019 @ 11:00am

		Three (3) Year Loan	Five (5) Year Loan
Country Roads Leasing, LLC PO Box 217 Bridgeport, WV 26330 P: (304) 842-2288	Non-Bank Qualified	4.27%	4.34%
	Bank Qualified	3.27%	3.34%
Pinnacle Public Finance, Inc. a Bank United Company 8377 E Hartford Dr., Suite 115 Scottsdale, AZ 85255 P: (480) 419-3634	Non-Bank Qualified	2.35%	2.38%
	Bank Qualified	2.35%	2.38%
Municipal Leasing Consultants 7 Old Town Lane Grand Isle, VT 05458 P: (802) 372-8435	Non-Bank Qualified	2.027%	2.027%
	Bank Qualified	2.027%	2.027%
PNC Equipment Finance, LLC 155 E. Broad Street, 5th Floor Columbus, OH 43215 P: (614) 463-6575	Non-Bank Qualified	2.10%	2.14%
	Bank Qualified	2.06%	2.06%

- c. Resolution No. 253-19 - Authorizing the Mayor or City Manager to enter into a construction contract with Triton Construction, Inc. in the amount of \$2,430,500.00 for repair work to the South Side Bridge. The contractor was selected through a competitive bidding process.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to enter into a construction contract with Triton Construction, Inc. in the amount of \$2,430,500.00 for repair work to the South Side Bridge. The contractor was selected through a competitive bidding process.

Storage added that it is anticipated that the WV Division of Highways will contribute approximately \$1.8 million. The cost exceeded the anticipated budget for the project by \$155,000.00.

Councilmember Hoover confirmed with City Engineer, Chris Knox, that the accepted bid was adequate to complete the project given the large difference in bid quotes. Councilmember Reishman confirmed with Knox that the City had worked with the accepted bidder in the past. The work will ideally begin in November.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 253-19 approved.

City of Charleston, WV
South Side Bridge Repair Project
Bid Opening: Friday, October 11, 2019 @ 10:00am

	Triton Construction, Inc PO Box 1360 St. Albans, WV 25177 P: (304)759-2100	Advantage Steel and Construction LLC 2300 South Noah Drive Saxonburg, PA 16056 P: (724) 352-4842	Orders Construction Company PO Box 1448 St. Albans, WV 25177 P: (304) 722-4237
South Side Bridge Repair Project	\$2,430,500.00	\$3,129,120.00	\$4,305,430.00
Total Bid	\$2,430,500.00	\$3,129,120.00	\$4,305,430.00

- d. Resolution No. 254-19 - Authorizing the Mayor or City Manager to enter into a construction contract with Blue Creek Masonry, Inc. in the amount of \$53,500.00 for the construction of a new Charleston Wayfinding Welcome Sign to be placed near the intersection of Airport Road and Greenbrier Street.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to enter into a construction contract with Blue Creek Masonry, Inc. in the amount of \$53,500.00 for the construction of a new Charleston Wayfinding Welcome Sign to be placed near the intersection of Airport Road and Greenbrier Street.

Storage added that the proposed sign will be a companion to the one on Eastbound I-64. This is part of a long-term project with Wayfinding Commission, Charleston Area Alliance, GAI Consulting and the Greater Kanawha Valley Foundation. The latter of which will be contributing \$12,257, the remainder will come out of the Wayfinding Fund.

Councilmember Steele confirmed that the design will be the same as the current sign.

Storage added that the Wayfinding Commission has agreed to pay for solar lighting for the sign as well.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 254-19 approved.

City of Charleston, WV Wayfinding Welcome Sign Bid Opening: October 15, 2019 @ 10:00am	
	Blue Creek Masonry, Inc 1505 Rutledge Rd Charleston, WV 25311 (304) 400-4520 meansstone@hotmail.com
Charleston Wayfinding Welcome Sign	\$53,500.00
Total Bid	\$53,500.00

Councilmember Reishman motioned to adjourn the meeting.

Meeting adjourned.

Resolution No. 255-19

Introduced in Council:

Adopted by Council:

November 4, 2019

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 255-19 - Authorizing the Mayor or City Manager to sign Change Order No. 1 with Garcie R. Marker & Sons, Inc., in the amount of \$100,000.00, to repair approximately 4,500 square feet of additional concrete pavement on Court Street. The work includes approximately 115 cubic yards of Class K Portland Cement Concrete Pavement at \$815 per cubic yard and approximately 95 tons of aggregate base at \$65 per ton. The additional costs will increase the contract price from \$619,225.00 to \$719,225.00.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to sign Change Order No. 1 with Garcie R. Marker & Sons, Inc., in the amount of \$100,000.00, to repair approximately 4,500 square feet of additional concrete pavement on Court Street. The work includes approximately 115 cubic yards of Class K Portland Cement Concrete Pavement at \$815 per cubic yard and approximately 95 tons of aggregate base at \$65 per ton. The additional costs will increase the contract price from \$619,225.00 to \$719,225.00.

Concrete Street Repair Project #E4-06/19-126U



CHANGE ORDER NO.1

Council Approval of Contract:

July 1, 2019

Contractor:

**Garcie R. Marker & Sons Inc.
1119 Jefferson Road
South Charleston, WV 25309**

Description:

This change order will allow Garcie R. Marker & Sons, Inc. to repair approximately 4,500 ft² of additional concrete pavement on Court Street. The work includes approximately 115 yd³ of Class K Portland Cement Concrete Pavement at \$815/yd³ and approximately 95 TON of aggregate base at \$65/TON. The total amount of this change order is \$100,000.

Original Contract Price:	\$619,225.00
Total of this Change Order:	\$100,000.00
Total of previously approved Change Orders	\$ 0.00
Contract Price with all Approved Change Orders	\$719,225.00

Approved by:

Accepted by:

City of Charleston

Garcie R. Marker & Sons Inc.

Date

Date

Resolution No. 256-19

Introduced in Council:

Adopted by Council:

November 4, 2019

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 256-19 Authorizing the Finance Director to establish Agency Fund 902, *Coliseum & Convention Center Ticket Fund*, a custodial account that accounts for revenues received from ticket sales for events held at the Coliseum & Convention.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized to establish Agency Fund 902, *Coliseum & Convention Center Ticket Fund*, a custodial account that accounts for revenues received from ticket sales for events held at the Coliseum & Convention.

Resolution No. 257-19

Introduced in Council:

Adopted by Council:

November 4, 2019

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 257-19 - Authorizing the Finance Director to establish Agency Fund 903, *Coliseum & Convention Promotions Fund*, a custodial account that accounts for revenues received from customers for Coliseum & Convention Center sponsored and run events, and are subsequently dispersed and deposited to the *Coliseum & Convention Center Revenue Fund* after the events are over.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized to establish Agency Fund 903, Coliseum & Convention Promotions Fund, a custodial account that accounts for revenues received from customers for Coliseum & Convention Center sponsored and run events, and are subsequently dispersed and deposited to the Coliseum & Convention Center Revenue Fund after the events are over.

Resolution No. 259-19

Introduced in Council

Passed by Council

November 4, 2019

Introduced by
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 259-19 - Approval of FY 2020 Budget Amendment No. 4 – Creation of the
2 Office of Constituent Services.

3

4 Be it Resolved by the Council of the City of Charleston, West Virginia:

5

6 That Amendment No. 4 in the FY 2020, Creation of the Office of Constituent Services, is
7 approved.

General Fund FY 2019-2020 Budget Amendment No. 4 - November 4, 2019

Account No.	Department	Account Description	Amount
001 409 00 000 5 568	Mayor's Office	Other Contributions	(80,000)
001 442 01 000 1 103	Constituent Services	Wages & Salaries	51,500
001 442 01 000 1 104	Constituent Services	FICA	3,940
001 442 01 000 1 105	Constituent Services	Medical & Life Insurance	18,180
001 442 01 001 1 106	Constituent Services	Retirement - PERS	5,150
001 442 01 000 1 111	Constituent Services	Dental & Vision	621
001 442 01 000 1 112	Constituent Services	Insurance - Payroll Deduction	(2,683)
001 442 01 000 2 219	Constituent Services	Building & Equipment Rents	1,000
001 442 01 001 2 221	Constituent Services	Training	500
001 442 01 000 2 226	Constituent Services	Insurance - WC & UC	1,292
001 442 01 000 3 341	Constituent Services	Material & Supplies	500

To establish a separate budget unit for the Constituent Services Office, including 2 positions (pay grade 109).

Bill No. 7847

Introduced in Council:

October 21, 2019

Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Finance

1 **Bill No. 7847** - A BILL to amend the Municipal Code of the City of Charleston, as
2 amended, by adding thereto two new sections in Chapter 2, Article VI, Division 4,
3 Subdivision I, designated Sections 2-459 and 2-460 previously reserved for Division 3
4 of said Article VI; to amend and reenact Section 2-461; to repeal Section 2-462; to
5 amend and reenact Sections 2-471 and 2-472; to repeal Section 2-473; to amend and
6 reenact Sections 2-474, 2-475, 2-476, 2-479, and 2-480; and to amend said Code by
7 adding thereto a new Subdivision III containing eight new sections in said Division 4,
8 designated Sections 2-481, 2-482, 2-483, 2-484, 2-485, 2-486, 2-487, and 2-488, all
9 relating to modernizing and clarifying the City of Charleston purchasing policies;
10 defining terms; clarifying the policy of the City to attempt to procure commodities and
11 services locally; authorizing the use of a robust solicitation process instead of
12 newspaper advertisement; clarifying the handling of tie bids; explicitly requiring
13 contracts for commodities and services to be in writing; updating the requirements for
14 bid notices, bid submissions, deposits by bidders, the process for handling deposit
15 forfeitures, and rejection of bids; creating and detailing a local vendor preference under
16 certain conditions; specifying that contracts are not to be awarded to a bidder that is
17 delinquent in a financial obligation to the city; detailing the time period during which city
18 employees may not communicate with vendors; creating new policies related to change
19 orders, contract cancellation, bid protests, use of other competitively-procured
20 government contracts, and direct purchases; adopting the West Virginia Purchasing
21 Division's impossible to bid list; and creating grounds and procedures related to
22 debarment of potential bidders on city contracts.

23

24 **Now, therefore, be it ordained by the Council of the City of Charleston:**

25

26 That the Municipal Code of the City of Charleston, as amended, be amended by adding
27 thereto two new sections in Chapter 2, Article VI, Division 4, Subdivision I, designated
28 Sections 2-459 and 2-460 previously reserved for Division 3 of said Article VI; that
29 Section 2-461 of said code be amended and reenacted; that Section 2-462 of said code
30 be repealed; that Sections 2-471 and 2-472 of said code be amended and reenacted;
31 that Section 2-473 of said code be repealed; that Sections 2-474, 2-475, 2-476, 2-479,
32 and 2-480 of said code be amended and reenacted; and that said Code be amended
33 by adding thereto a new Subdivision III containing eight new sections in said Division 4,
34 designated Sections 2-481, 2-482, 2-483, 2-484, 2-485, 2-486, 2-487, and 2-488, all to
35 read as follows.

Chapter 2. – ADMINISTRATION.

ARTICLE VI. – FINANCE.

DIVISION 4. – CONTRACTS AND PURCHASES.

Subdivision I. – In General.

Sec. 2- 459 – Definitions.

As used in this division, unless the context clearly requires a different meaning:

(1) “City manager” means the City Manager of the City of Charleston or his or her designee, such as the city’s purchasing director.

(2) “Commodities” means supplies, material, equipment and any other articles or things used by or furnished to the city.

(3) “Contract” means an agreement between the city and a vendor relating to the procurement of commodities or services, or both.

(4) “Debarment” means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the city for a specified period of time.

(5) “Debarred Vendor” means any vendor debarred by the West Virginia Purchasing Division pursuant to W. Va. Code § 5A-3-33e or debarred by the city, which results in the city’s inability to solicit offers from, award contract to, or consent to subcontract with the vendor during the debarment period.

(6) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(7) “Final offer” means a tie-breaking bid submitted subsequent to a bid opening where the apparent lowest bidder and apparent second-lowest bidder submit tied initial bids.

(8) “Impossible to Bid List” means a list adopted by the city of commodities or services that are not possible to submit for competitive bid.

(9) “Local Vendor” means a responsible vendor who has an active and current business and occupation tax account on file with the city collector for the duration of a period of one year preceding the date on which an applicable bid opening occurs.

(10) “Lowest responsible bidder” means a responsible bidder who has submitted the lowest priced bid and who did not materially deviate from the mandatory terms and conditions contained in the solicitation.

(11) “Responsible bidder” means a bidder who has the capability to fully perform the contract requirements and the integrity and reliability which will assure good-faith performance.

(12) “Non-responsible bid” means a bid that fails to conform to the solicitation in all material respects.

(13) “Non-responsible bidder” means a bidder not having the capability to fully perform the contract requirements and lacking the integrity and reliability which will assure good-faith performance.

(14) “Services” means the furnishing of labor, time, expertise or effort, not involving the delivery of a specific end commodity or product other than one that may be incidental to the required performance.

(15) "Vendor" means any person or entity that may, through contract or other means, supply the city with commodities or services.

Sec. 2-460. - City manager to purchase all commodities and services.

It shall be the duty of the city manager to supervise the purchase of all commodities and services necessary for the city or for the departments of city government.

Sec. 2-461. – Purchase of supplies and materials commodities and services.

(a) All ~~supplies and materials~~ commodities and services for the various departments of the city government, not exceeding at any one time the sum of \$25,000.00, shall be purchased by the city manager, and every reasonable precaution shall be taken to procure the ~~supplies and materials~~ commodities and services at the very lowest price possible consistent with good service and quality. The city manager is encouraged to first attempt to procure commodities and services from responsible vendors within city limits before contracting with vendors principally operating outside of city limits. All such purchases shall be made upon requisition signed by the officer in charge of the department for which the ~~supplies and materials~~ commodities or services are needed and filed with the city manager. City department employees who receive deliveries from vendors are responsible for inspecting the commodities and services upon delivery to ensure that purchases meet contractual requirements and are responsible for maintaining records of receipt. ~~who shall thereupon direct his/her order to the person from whom it is proposed to purchase the supplies or materials, requiring him/her to deliver the supplies to the person in charge of the department for which ordered, and the supplier shall make out his bill at the contract price, on a blank form attached to order and furnished therewith by the manager, and shall send the bill with the goods to the officer in charge of the department for which they were ordered; and it shall be the duty of the officer to examine the goods delivered and the quantity thereof; and if he/she finds the quantity to be as stated in the order and the quality first class or of the grade ordered, he/she shall endorse the bill with a statement that the goods have been received and the quantity and quality found to be correct and shall return the bill and the order upon which it was furnished to the merchant or person making the same, who shall file it with the city manager for approval and authorization for payment. If found incorrect, or if the quality be found below the standard and grade ordered, the officer in charge shall refuse to accept the goods and shall notify the manager to that effect, and the person furnishing the goods shall be notified by the officer in charge of the department that the goods can only remain where delivered at the risk of the person delivering.~~

(b) The purchase of ~~supplies and materials~~ commodities and services for the various departments of the city government exceeding at any one time the sum of \$25,000.00 shall be approved by the city council, and thereupon the provisions of subsection (a) of this section shall become applicable.

(c) Nothing in this article shall be construed to preclude the purchase by the city of ~~materials, supplies and equipment~~ commodities and services by agreement between

the city and state director of the division of purchases of the department of finance and administration West Virginia Purchasing Division, as provided in West Virginia Code § 8-12-10(a).

(d) Nothing in this article shall preclude the city manager from purchasing ~~supplies and materials~~ commodities and services without receiving approval from city council where, in the judgment of the city manager, the failure to immediately purchase ~~supplies and materials~~ the commodities or services, prior to securing council approval, would result in a condition of extreme peril resulting in substantial damages or injury to persons or property within this city, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

(e) No contract may be authorized to any business or individual that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits.

~~Sec. 2-462. - City manager to purchase all supplies and materials.~~

~~It shall be the duty of the city manager to supervise the purchase of all supplies and materials necessary for the use of the city or for any and all departments of the city government.~~

Subdivision II. - Bids

Sec. 2-471. - When advertising for bids required; publication of advertisement, time for opening of bids; letting of contracts breaking of ties; contracts to be in writing.

(a) Whenever any contract is proposed to be entered into by the city involving the expenditure of more than \$25,000.00, except where such contract involves the rendering of professional services or where such contract is for ~~materials and supplies~~ commodities and services as referenced in Section 2-461, the city manager shall ~~publish an advertisement~~ a solicitation calling for bids ~~for this work~~, unless it is decided to do this work with city personnel or others employed by the city for such purposes. The time for opening such bids shall not be less than ten days from the date of the first publication of the ~~advertisement~~ solicitation. ~~The advertisement~~ solicitation shall be advertised through city websites and may also be advertised in newspapers, newsletters, trade journals, mass emailing, or any other media the city manager considers advisable. ~~shall be printed once a week for two successive weeks in two newspapers of opposite politics, and of general circulation and published in the city, preceding the time of opening the bids.~~

(b) ~~The council shall reserve the right to reject any and all bids, but the contract, if let, must be let to the lowest responsible bidder. When tie bids are received, the city manager may break the tie by allowing the vendors to make a final offer according to procedures adopted by the city manager.~~

(c) All contracts for the purchase of commodities and services must be in writing.

(d) No contract shall be awarded to any bidder that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits; Provided,

~~that nothing herein~~ Nothing in this article is to ~~affect~~ effect the procurement procedures for design build projects ~~which are~~ governed by West Virginia Code §5-22A-1 et seq. and Section 3-16 of this code, or the procurement procedures for architectural or engineering services ~~which are~~ governed by West Virginia Code § 5G-1-1 et seq. and Section 3-15 of this code.

(b) (e) Nothing in this article shall preclude the city manager from entering into contracts without first advertising for bids and receiving council approval where, in the judgment of the city manager, the failure to immediately enter into a contract, would result in a condition of extreme peril resulting in substantial damages or injury to persons or property within this city, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

Sec. 2-472. - Contents of advertisements solicitation for bids.

Notice to bidders shall state:

- (1) The nature of the work;
- (2) The place where the plans and specifications and forms of contract may be seen;
- (3) The amount of cash or bond to be deposited with the city treasurer or city manager, as may be required;
- (4) The city's local vendor preference guidelines;
- (4) (5) The time up to which the bids shall be received and the hour and place of ~~opening the bids~~ bid opening; and
- (5) (6) The right of the city council or the city manager to reject any and all bids;
- (7) That debarred vendors may not submit bids or be awarded contracts;
- (8) That bidders have a right to file a bid protest; and
- (9) That the city is exempt from state and local taxes.

Sec. 2-473. - ~~Additional invitations and advertising soliciting bids.~~

~~Nothing in section 2-471 shall preclude the city council from directing that invitations to bid shall also be given to contractors in other localities believed to be qualified to perform the work sought to be performed, or from causing additional advertisements from being published in other localities; however, all such invitations and advertisements shall conform to the requirements of section 2-472, and no prospective bidder shall be given any information not given to all other prospective bidders.~~

Sec. 2-474. - Submission of bids.

Bids must be submitted in accordance with the procedures established by the city manager. The city manager is authorized, but is not required, to accept bids by electronic transmission with the use of suitable computer software programs or systems approved by the city manager.

~~Each bid for work under this division shall be made upon a blank form to be~~

~~furnished by the city manager and shall be placed in a sealed envelope addressed to the manager and endorsed "Proposals for _____." Each bid shall be signed by the bidder or by an authorized officer or agent where the bid is by a firm or corporation. The bid shall not be opened before the time and hour fixed in the notice.~~

Sec. 2-475. - Deposits by bidders.

The city manager shall determine the applicability and amount of bonds or deposits required of a vendor at any time, if, it is judged that security is necessary to safeguard the city from undue risk. The city manager may require the vendor to submit a certified check, certificate of deposit, performance bond, litigation bond, or any other security acceptable to the city manager, payable to the City of Charleston. Neither personal checks nor company checks are acceptable. Vendors can request that bonds or other security be returned after the purpose for which the bond was provided has been fulfilled. Upon confirmation from the city department or other relevant party that the bond or security in question has fully served its purpose, the city manager may return the bond or security.

~~_____ (a) The amount of the cash or bond deposited shall be equal to five percent of the total cost of the work as estimated by the city manager; however, no deposit shall be less than \$25.00.~~

~~_____ (b) The deposit so made shall be conditioned that the successful bidder shall enter into a written contract to do the work bid for according to the terms of his bid and shall furnish approved security within ten days after the award has been made and the successful bidder notified.~~

Sec. 2-476. - When bidder's deposit forfeited.

If any bidder to whom a contract shall have been awarded fails to enter into a contract and to furnish approved security within the time specified, his deposit shall be forfeited to the city. and the The city manager may advertise for new bids or may contract with the next lowest responsible bidder, so long as such vendor honors the price submitted in its bid.

Sec. 2-479. - Rejection of bids.

The city manager must reject a bid that is found to be non-responsible. The city manager may waive minor irregularities in bids or specifications when the city manager determines such action to be appropriate.

~~_____ If in any bid blanks are not properly filled up so as to make the bid complete and without an ambiguity as to its intent and meaning, or if a bid has any alteration or erasure upon it, or if it is not properly signed, or if the certificate of deposit has not been enclosed with the bid as provided, the bid shall be rejected.~~

Sec. 2-480. - Action upon bids; bid evaluation; local vendor preference; award of

contract; authority to reject all bids.

(a) Upon the opening and consideration of all bids by the city manager, he shall submit them to the city council, together with his calculations and recommendations, to the city council for appropriate action with respect to awarding the contract.

(b) A local vendor may qualify for a competitive advantage applied to its bid when the following conditions are met:

(1) The vendor has marked on its bid submission that it is requesting to be considered a local vendor for bid evaluation purposes;

(2) The vendor provides documentation evidencing that it has the right to conduct business in the State of West Virginia; and

(3) The vendor submits an affidavit confirming that it has paid all applicable business taxes to the city or has a non-delinquent payment plan with the city and has had an active and current business and occupation tax account with the city collector during the entire preceding one-year period.

(c) Competitive advantages shall be applied in the following manner:

(1) A competitive advantage of 4% shall be applied to the local vendor's bid when, prior to applying the competitive advantage, the apparent lowest responsible bidder submits a bid that is greater than \$25,000 but does not exceed \$125,000.

(2) The competitive advantage of \$5,000 shall be applied to the local vendor's bid when, prior to applying the competitive advantage, the apparent lowest responsible bidder submits a bid that is greater than \$125,000.

(d) In evaluating bids, the city manager shall apply the applicable competitive advantage to a qualifying local vendor by deducting the value of the competitive advantage from the local vendor's net total bid amount. The resulting amount will be used in evaluating the bids to determine the lowest responsible bidder.

(e) The contract, if awarded, must be awarded to the lowest responsible bidder. Provided; that no contract shall be awarded to any bidder that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits.

(f) From the time a solicitation is advertised until an award is made, no city employee may communicate with vendors about a solicitation or any component thereof without prior approval from the city manager. All communication regarding a solicitation must be directed to the city manager until an award has been made. Nothing in this subsection, however, shall prevent city employees from communicating with a vendor about existing contracts or other matters unrelated to a pending solicitation.

(g) The council or the manager shall have the authority to reject all bids.

Subdivision III. - Administrative.

Sec. 2-481. – Change Orders.

The city manager has the authority and responsibility to review contract change orders just as he or she has authority and responsibility for review and approval of the original contract. Any city department desiring to make a change to a contract must submit a request for the contract change to the city manager for review. City departments must not permit vendors to perform work that is the subject of a change

order request until the change order has been approved by the city manager.

Sec. 2-482. – Contract Cancellation.

(a) The city manager may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

(1) The vendor agrees to the cancellation;

(2) The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

(3) Failure to honor any contractual term or condition or to honor standard commercial practices;

(4) The existence of an organizational conflict of interest is identified;

(5) Funds are not appropriated or an appropriation is discontinued by the council for the acquisition;

(6) Violation of any federal, state, or local law, regulation, or ordinance, and

(7) The contract was awarded in error.

(b) The city manager may cancel a purchase or contract for any reason or no reason, upon providing the vendor with 30 days' notice of the cancellation.

Sec. 2-483 – Protests.

(a) Protest of a purchase or contract award may be submitted no later than seven calendar days after the council approves of the award following a formal solicitation and bid opening process administered by the city. When the due date for the protest submission falls on a legal holiday, the protest must be received during the next business day. The vendor is responsible for knowing the bid opening and award dates. Protests received late may be rejected at the option of the city manager.

(b) All protests must be submitted in writing to the city manager and contain the following information:

(1) The name and address of the protestor;

(2) The solicitation number;

(3) A statement of the grounds of protest;

(4) Supporting documentation, if necessary; and

(5) The resolution or relief sought.

(c) Failure to submit this information shall be grounds for rejection of the protest by the city manager.

(d) The city manager shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the city manager. Continuation or delay of a contract award is at the discretion of the city manager.

(e) The decision of the city manager is final and is not appealable.

(f) The city manager may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided by the city manager in a previous protest.

Sec. 2-484 – Use of Other Competitively-Procured Government Contracts.

Notwithstanding any provision of this code to the contrary, the city manager may purchase commodities or services without advertising a city solicitation and receiving bids when a responsible vendor has been awarded a contract with a federal or State of West Virginia governmental entity through a competitive selection process. Provided; that for purchases of commodities or services exceeding \$25,000 in value, the purchase must be approved by council.

Sec. 2-485 – Impossible to Bid List.

Notwithstanding any provision of this code to the contrary, the city adopts the West Virginia Purchasing Division's list of commodities and services that are not possible to submit for competitive bid, as identified in the agency's Procedures Handbook, which may be amended from time to time. The city manager may contract directly with a responsible vendor who supplies commodities or services identified on the Impossible to Bid List. Council approval is required when the contract will exceed \$25,000. Provided; that the city attorney, with the consent of the city manager, may contract directly with an attorney, law firm, expert witness, or legal consultant considered necessary and suitable in pursuing and defending the city's interests without first seeking council approval.

Sec. 2-486 – Direct Purchases.

Notwithstanding any provision of this code to the contrary, the council may approve by resolution to forego these bidding requirements and contract directly with a responsible vendor when, in the council's sound judgment, it is in the city's best interest to procure certain commodities or services directly from the identified responsible vendor: Provided, That this section does not apply to the procurement of construction contracts, which are governed by W. Va. Code § 5-22-1, or contracts for architectural or engineering services, which are governed by W. Va. Code § 5G-1-1 et seq. and Section 3-15 of this code. Provided further; that this section does not apply when federal statutes or regulations require the city to follow a competitive selection process to apply for or administer federal grants or aid.

Sec. 2-487 – Grounds for Debarment.

(a) Grounds for debarment are:

(1) Conviction of an offense involving fraud or a felony offense related to obtaining or attempting to obtain a public contract or subcontract;

(2) Conviction of any federal or state antitrust statute relating to the submission of offers; such as price fixing, bid rigging, and market allocation schemes;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property related to the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

____ (5) Violation of the terms of a public contract or subcontract for:
____ (A) Willful failure to substantially perform in accordance with the terms of one or
more public contracts;
____ (B) Performance in violation of standards established by law or generally
accepted standards of the trade or profession amounting to intentionally deficient or
grossly negligent performance on one or more public contracts;
____ (C) Use of substandard materials on one or more public contracts or defects in
construction in one or more public construction projects amounting to intentionally
deficient or grossly negligent performance, even if discovery of the defect is subsequent
to acceptance of a construction project and expiration of any warranty thereunder; or
____ (D) A repeated pattern or practice of failure to perform so serious and compelling
as to justify debarment; or
____ (6) Any other cause of a serious and compelling nature amounting to knowing
and willful misconduct of the vendor that demonstrates a wanton indifference to the
interests of the public and that caused, or that had a substantial likelihood of causing,
serious harm to the public.
____ (b) For the purposes of this section, the term "conviction" includes, but may not
be limited to, the entering of a deferred prosecution agreement or a plea of guilty or
nolo contendere, including pleading to a lesser or related offense in exchange for some
form of prosecutorial leniency.
____ (c) Pursuant to W. Va. Code § 5A-3-33f, vendors debarred by the West Virginia
Purchasing Division are automatically debarred by the city and may not be awarded
contracts.

Sec. 2-488. - Debarment Procedures.

____ (a) The city manager shall notify the vendor by certified mail of the following:
____ (1) The reasons for the proposed debarment in sufficient detail to put the vendor
on notice of the conduct or transactions upon which the proposed debarment is based;
____ (2) The causes relied upon for the proposed debarment;
____ (3) That within thirty calendar days after receipt of the notice, the vendor may
submit in writing information and argument in opposition to the proposed debarment;
____ (4) The procedures governing debarment decision-making; and
____ (5) The potential effect of the proposed debarment.
____ (b) The city manager may hold a hearing if the vendor contests the debarment.
In any debarment decision, the city manager shall make a specific finding, based on the
substantial record, whether the public interest requires that the debarment decision
extend to all commodities and services of the vendor, or whether the public interest
allows the debarment decision to be limited to specific commodities or services.
____ (c) In any debarment decision, the city manager shall specify the length of the
debarment period. The debarment period must be for the period of time that the city
manager finds necessary and proper to protect the public from a non-responsible
vendor.
____ (d) Proof of grounds for debarment must be clear and convincing.
____ (e) The debarment decision of the city manager is appealable to the Circuit Court
of Kanawha County, West Virginia, within 30 calendar days of receiving the decision.

450 and the appeal will be governed by the procedure established in W. Va. Code § 29A-5-
451 4.
452

Committee Substitute for Bill No. 7847

Introduced in Council:

October 21, 2019

Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Finance

1 **Committee Substitute for Bill No. 7847** - A BILL to amend the Municipal Code of the
2 City of Charleston, as amended, by adding thereto two new sections in Chapter 2,
3 Article VI, Division 4, Subdivision I, designated Sections 2-459 and 2-460 previously
4 reserved for Division 3 of said Article VI; to amend and reenact Section 2-461; to repeal
5 Section 2-462; to amend and reenact Sections 2-471 and 2-472; to repeal Section 2-
6 473; to amend and reenact Sections 2-474, 2-475, 2-476, 2-479, and 2-480; and to
7 amend said Code by adding thereto a new Subdivision III containing eight new sections
8 in said Division 4, designated Sections 2-481, 2-482, 2-483, 2-484, 2-485, 2-486, 2-
9 487, and 2-488, all relating to modernizing and clarifying the City of Charleston
10 purchasing policies; defining terms; clarifying the policy of the City to attempt to procure
11 commodities and services locally; authorizing the use of a robust solicitation process
12 instead of newspaper advertisement; clarifying the handling of tie bids; explicitly
13 requiring contracts for commodities and services to be in writing; updating the
14 requirements for bid notices, bid submissions, deposits by bidders, the process for
15 handling deposit forfeitures, and rejection of bids; creating and detailing a local vendor
16 preference under certain conditions; specifying that contracts are not to be awarded to
17 a bidder that is delinquent in a financial obligation to the city; detailing the time period
18 during which city employees may not communicate with vendors; creating new policies
19 related to change orders, contract cancellation, bid protests, use of other competitively-
20 procured government contracts, and direct purchases; adopting the West Virginia
21 Purchasing Division's impossible to bid list; and creating grounds and procedures
22 related to debarment of potential bidders on city contracts.

23

24 **Now, therefore, be it ordained by the Council of the City of Charleston:**

25

26 That the Municipal Code of the City of Charleston, as amended, be amended by adding
27 thereto two new sections in Chapter 2, Article VI, Division 4, Subdivision I, designated
28 Sections 2-459 and 2-460 previously reserved for Division 3 of said Article VI; that
29 Section 2-461 of said code be amended and reenacted; that Section 2-462 of said code
30 be repealed; that Sections 2-471 and 2-472 of said code be amended and reenacted;
31 that Section 2-473 of said code be repealed; that Sections 2-474, 2-475, 2-476, 2-479,
32 and 2-480 of said code be amended and reenacted; and that said Code be amended
33 by adding thereto a new Subdivision III containing eight new sections in said Division 4,
34 designated Sections 2-481, 2-482, 2-483, 2-484, 2-485, 2-486, 2-487, and 2-488, all to
35 read as follows.

36
37 **Chapter 2. – ADMINISTRATION.**

38 **ARTICLE VI. – FINANCE.**

39 **DIVISION 4. – CONTRACTS AND PURCHASES.**

40 **Subdivision I. – In General.**

41
42 **Sec. 2- 459 – Definitions.**

43
44 As used in this division, unless the context clearly requires a different meaning:

45 (1) “City manager” means the City Manager of the City of Charleston or his or her
46 designee, such as the city’s purchasing director.

47 (2) “Commodities” means supplies, material, equipment and any other articles or
48 things used by or furnished to the city.

49 (3) “Contract” means an agreement between the city and a vendor relating to the
50 procurement of commodities or services, or both.

51 (4) “Debarment” means the exclusion of a vendor from the right to bid on
52 contracts to sell goods or supply services to the city for a specified period of time.

53 (5) “Debarred Vendor” means any vendor debarred by the West Virginia
54 Purchasing Division pursuant to W. Va. Code § 5A-3-33e or debarred by the city, which
55 results in the city’s inability to solicit offers from, award contract to, or consent to
56 subcontract with the vendor during the debarment period.

57 (6) “Electronic transmission” or “electronically transmitted” means any process of
58 communication not directly involving the physical transfer of paper that is suitable for
59 the retention, retrieval and reproduction of information by the recipient.

60 (7) “Final offer” means a tie-breaking bid submitted subsequent to a bid opening
61 where the apparent lowest bidder and apparent second-lowest bidder submit tied initial
62 bids.

63 (8) “Impossible to Bid List” means a list adopted by the city of commodities or
64 services that are not possible to submit for competitive bid.

65 (9) “Local Vendor” means a responsible vendor who has an active and current
66 business and occupation tax account on file with the city collector for the duration of a
67 period of one year preceding the date on which an applicable bid opening occurs.

68 (10) “Lowest responsible bidder” means a responsible bidder who has submitted
69 the lowest priced bid and who did not materially deviate from the mandatory terms and
70 conditions contained in the solicitation.

71 (11) “Responsible bidder” means a bidder who has the capability to fully perform
72 the contract requirements and the integrity and reliability which will assure good-faith
73 performance.

74 (12) “Non-responsible bid” means a bid that fails to conform to the solicitation in
75 all material respects.

76 (13) “Non-responsible bidder” means a bidder not having the capability to fully
77 perform the contract requirements and lacking the integrity and reliability which will
78 assure good-faith performance.

79 (14) “Services” means the furnishing of labor, time, expertise or effort, not
80 involving the delivery of a specific end commodity or product other than one that may
81 be incidental to the required performance.

(15) "Vendor" means any person or entity that may, through contract or other means, supply the city with commodities or services.

Sec. 2-460. - City manager to purchase all commodities and services.

It shall be the duty of the city manager to supervise the purchase of all commodities and services necessary for the city or for the departments of city government.

Sec. 2-461. – Purchase of supplies and materials commodities and services.

(a) All ~~supplies and materials~~ commodities and services for the various departments of the city government, not exceeding at any one time the sum of \$25,000.00, shall be purchased by the city manager, and every reasonable precaution shall be taken to procure the ~~supplies and materials~~ commodities and services at the very lowest price possible consistent with good service and quality. The city manager is encouraged to first attempt to procure commodities and services from responsible vendors within city limits before contracting with vendors principally operating outside of city limits. All such purchases shall be made upon requisition signed by the officer in charge of the department for which the ~~supplies and materials~~ commodities or services are needed and filed with the city manager. City department employees who receive deliveries from vendors are responsible for inspecting the commodities and services upon delivery to ensure that purchases meet contractual requirements and are responsible for maintaining records of receipt. ~~who shall thereupon direct his/her order to the person from whom it is proposed to purchase the supplies or materials, requiring him/her to deliver the supplies to the person in charge of the department for which ordered, and the supplier shall make out his bill at the contract price, on a blank form attached to order and furnished therewith by the manager, and shall send the bill with the goods to the officer in charge of the department for which they were ordered; and it shall be the duty of the officer to examine the goods delivered and the quantity thereof; and if he/she finds the quantity to be as stated in the order and the quality first class or of the grade ordered, he/she shall endorse the bill with a statement that the goods have been received and the quantity and quality found to be correct and shall return the bill and the order upon which it was furnished to the merchant or person making the same, who shall file it with the city manager for approval and authorization for payment. If found incorrect, or if the quality be found below the standard and grade ordered, the officer in charge shall refuse to accept the goods and shall notify the manager to that effect, and the person furnishing the goods shall be notified by the officer in charge of the department that the goods can only remain where delivered at the risk of the person delivering.~~

(b) The purchase of ~~supplies and materials~~ commodities and services for the various departments of the city government exceeding at any one time the sum of \$25,000.00 shall be approved by the city council, and thereupon the provisions of subsection (a) of this section shall become applicable.

(c) Nothing in this article shall be construed to preclude the purchase by the city of ~~materials, supplies and equipment~~ commodities and services by agreement between

the city and state director of the division of purchases of the department of finance and administration West Virginia Purchasing Division, as provided in West Virginia Code § 8-12-10(a).

(d) Nothing in this article shall preclude the city manager from purchasing ~~supplies and materials~~ commodities and services without receiving approval from city council where, in the judgment of the city manager, the failure to immediately purchase ~~supplies and materials~~ the commodities or services, prior to securing council approval, would result in a condition of extreme peril resulting in substantial damages or injury to persons or property within this city, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

(e) No contract may be authorized to any business or individual that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits.

~~Sec. 2-462. - City manager to purchase all supplies and materials.~~

~~It shall be the duty of the city manager to supervise the purchase of all supplies and materials necessary for the use of the city or for any and all departments of the city government.~~

Subdivision II. - Bids

Sec. 2-471. - When advertising for bids required; publication of advertisement, time for opening of bids; letting of contracts breaking of ties; contracts to be in writing.

(a) Whenever any contract is proposed to be entered into by the city involving the expenditure of more than \$25,000.00, except where such contract involves the rendering of professional services or where such contract is for ~~materials and supplies~~ commodities and services as referenced in Section 2-461, the city manager shall ~~publish an advertisement~~ a solicitation calling for bids ~~for this work~~, unless it is decided to do this work with city personnel or others employed by the city for such purposes. The time for opening such bids shall not be less than ten days from the date of the first publication of the ~~advertisement~~ solicitation. The advertisement solicitation shall be advertised through city websites and may also be advertised in newspapers, newsletters, trade journals, mass emailing, or any other media the city manager considers advisable. ~~shall be printed once a week for two successive weeks in two newspapers of opposite politics, and of general circulation and published in the city, preceding the time of opening the bids.~~

(b) ~~The council shall reserve the right to reject any and all bids, but the contract, if let, must be let to the lowest responsible bidder. When tie bids are received, the city manager may break the tie by allowing the vendors to make a final offer according to procedures adopted by the city manager.~~

(c) All contracts for the purchase of commodities and services must be in writing.

(d) ~~No contract shall be awarded to any bidder that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits; Provided,~~

~~that nothing herein~~ Nothing in this article is to ~~affect~~ effect the procurement procedures for design build projects ~~which are~~ governed by West Virginia Code §5-22A-1 et seq. and Section 3-16 of this code, the procurement procedures for construction contracts governed by West Virginia Code §5-22-1 et seq., or the procurement procedures for architectural or engineering services ~~which are~~ governed by West Virginia Code § 5G-1-1 et seq. and Section 3-15 of this code.

~~(b)~~ (e) Nothing in this article shall preclude the city manager from entering into contracts without first advertising for bids and receiving council approval where, in the judgment of the city manager, the failure to immediately enter into a contract, would result in a condition of extreme peril resulting in substantial damages or injury to persons or property within this city, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

Sec. 2-472. - Contents of advertisements solicitation for bids.

Notice to bidders shall state:

- (1) The nature of the work;
- (2) The place where the plans and specifications and forms of contract may be seen;
- (3) The amount of cash or bond to be deposited with the city treasurer or city manager, as may be required;
- (4) The city's local vendor preference guidelines;
- ~~(4)~~ (5) The time up to which the bids shall be received and the hour and place of ~~opening the bids~~ bid opening; and
- ~~(5)~~ (6) The right of the city council or the city manager to reject any and all bids;
- ~~(7)~~ That debarred vendors may not submit bids or be awarded contracts;
- ~~(8)~~ That bidders have a right to file a bid protest; and
- ~~(9)~~ That the city is exempt from state and local taxes.

Sec. 2-473. - ~~Additional invitations and advertising soliciting bids.~~

~~Nothing in section 2-471 shall preclude the city council from directing that invitations to bid shall also be given to contractors in other localities believed to be qualified to perform the work sought to be performed, or from causing additional advertisements from being published in other localities; however, all such invitations and advertisements shall conform to the requirements of section 2-472, and no prospective bidder shall be given any information not given to all other prospective bidders.~~

Sec. 2-474. - Submission of bids.

Bids must be submitted in accordance with the procedures established by the city manager. The city manager is authorized, but is not required, to accept bids by electronic transmission with the use of suitable computer software programs or systems approved by the city manager.

~~Each bid for work under this division shall be made upon a blank form to be furnished by the city manager and shall be placed in a sealed envelope addressed to the manager and endorsed "Proposals for _____." Each bid shall be signed by the bidder or by an authorized officer or agent where the bid is by a firm or corporation. The bid shall not be opened before the time and hour fixed in the notice.~~

Sec. 2-475. - Deposits by bidders.

The city manager shall determine the applicability and amount of bonds or deposits required of a vendor at any time, if, it is judged that security is necessary to safeguard the city from undue risk. The city manager may require the vendor to submit a certified check, certificate of deposit, performance bond, litigation bond, or any other security acceptable to the city manager, payable to the City of Charleston. Neither personal checks nor company checks are acceptable. Vendors can request that bonds or other security be returned after the purpose for which the bond was provided has been fulfilled. Upon confirmation from the city department or other relevant party that the bond or security in question has fully served its purpose, the city manager may return the bond or security.

~~(a) The amount of the cash or bond deposited shall be equal to five percent of the total cost of the work as estimated by the city manager; however, no deposit shall be less than \$25.00.~~

~~(b) The deposit so made shall be conditioned that the successful bidder shall enter into a written contract to do the work bid for according to the terms of his bid and shall furnish approved security within ten days after the award has been made and the successful bidder notified.~~

Sec. 2-476. - When bidder's deposit forfeited.

If any bidder to whom a contract shall have been awarded fails to enter into a contract and to furnish approved security within the time specified, his deposit shall be forfeited to the city. and the The city manager may advertise for new bids or may contract with the next lowest responsible bidder, so long as such vendor honors the price submitted in its bid.

Sec. 2-479. - Rejection of bids.

The city manager must reject a bid that is found to be non-responsible. The city manager may waive minor irregularities in bids or specifications when the city manager determines such action to be appropriate.

~~If in any bid blanks are not properly filled up so as to make the bid complete and without an ambiguity as to its intent and meaning, or if a bid has any alteration or erasure upon it, or if it is not properly signed, or if the certificate of deposit has not been enclosed with the bid as provided, the bid shall be rejected.~~

Sec. 2-480. - Action upon bids; bid evaluation; local vendor preference; award of contract; authority to reject all bids.

(a) Upon the opening and consideration of all bids by the city manager, he shall submit them to the city council, together with his calculations and recommendations, to the city council for appropriate action with respect to awarding the contract.

(b) A local vendor may qualify for a competitive advantage applied to its bid when the following conditions are met:

(1) The vendor has marked on its bid submission that it is requesting to be considered a local vendor for bid evaluation purposes;

(2) The vendor provides documentation evidencing that it has the right to conduct business in the State of West Virginia; and

(3) The vendor submits an affidavit confirming that it has paid all applicable business taxes to the city or has a non-delinquent payment plan with the city and has had an active and current business and occupation tax account with the city collector during the entire preceding one-year period.

(c) Competitive advantages shall be applied in the following manner:

(1) A competitive advantage of 4% shall be applied to the local vendor's bid when, prior to applying the competitive advantage, the apparent lowest responsible bidder submits a bid that is greater than \$25,000 but does not exceed \$125,000.

(2) The competitive advantage of \$5,000 shall be applied to the local vendor's bid when, prior to applying the competitive advantage, the apparent lowest responsible bidder submits a bid that is greater than \$125,000.

(d) In evaluating bids, the city manager shall apply the applicable competitive advantage to a qualifying local vendor by deducting the value of the competitive advantage from the local vendor's net total bid amount. The resulting amount will be used in evaluating the bids to determine the lowest responsible bidder.

(e) The contract, if awarded, must be awarded to the lowest responsible bidder. Provided; that no contract shall be awarded to any bidder that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits.

(f) From the time a solicitation is advertised until an award is made, no city employee may communicate with vendors about a solicitation or any component thereof without prior approval from the city manager. All communication regarding a solicitation must be directed to the city manager until an award has been made. Nothing in this subsection, however, shall prevent city employees from communicating with a vendor about existing contracts or other matters unrelated to a pending solicitation.

(g) The council or the manager shall have the authority to reject all bids.

Subdivision III. - Administrative.

Sec. 2-481. – Change Orders.

The city manager has the authority and responsibility to review contract change orders just as he or she has authority and responsibility for review and approval of the original contract. Any city department desiring to make a change to a contract must submit a request for the contract change to the city manager for review. City

departments must not permit vendors to perform work that is the subject of a change order request until the change order has been approved by the city manager.

Sec. 2-482. – Contract Cancellation.

(a) The city manager may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

(1) The vendor agrees to the cancellation;

(2) The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

(3) Failure to honor any contractual term or condition or to honor standard commercial practices;

(4) The existence of an organizational conflict of interest is identified;

(5) Funds are not appropriated or an appropriation is discontinued by the council for the acquisition;

(6) Violation of any federal, state, or local law, regulation, or ordinance, and

(7) The contract was awarded in error.

(b) The city manager may cancel a purchase or contract for any reason or no reason, upon providing the vendor with 30 days' notice of the cancellation.

Sec. 2-483 – Protests.

(a) Protest of a purchase or contract award may be submitted no later than seven calendar days after the council approves of the award following a formal solicitation and bid opening process administered by the city. When the due date for the protest submission falls on a legal holiday, the protest must be received during the next business day. The vendor is responsible for knowing the bid opening and award dates. Protests received late may be rejected at the option of the city manager.

(b) All protests must be submitted in writing to the city manager and contain the following information:

(1) The name and address of the protestor;

(2) The solicitation number;

(3) A statement of the grounds of protest;

(4) Supporting documentation, if necessary; and

(5) The resolution or relief sought.

(c) Failure to submit this information shall be grounds for rejection of the protest by the city manager.

(d) The city manager shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the city manager. Continuation or delay of a contract award is at the discretion of the city manager.

(e) The decision of the city manager is final and is not appealable.

(f) The city manager may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided by the city manager in a previous protest.

358 **Sec. 2-484 – Use of Other Competitively-Procured Government Contracts.**

359
360 Notwithstanding any provision of this code to the contrary, the city manager may
361 purchase commodities or services without advertising a city solicitation and receiving
362 bids when a responsible vendor has been awarded a contract with a federal or State of
363 West Virginia governmental entity through a competitive selection process. Provided;
364 that for purchases of commodities or services exceeding \$25,000 in value, the
365 purchase must be approved by council.

366
367 **Sec. 2-485 – Impossible to Bid List.**

368
369 Notwithstanding any provision of this code to the contrary, the city adopts the
370 West Virginia Purchasing Division's list of commodities and services that are not
371 possible to submit for competitive bid, as identified in the agency's Procedures
372 Handbook, which may be amended from time to time. The city manager may contract
373 directly with a responsible vendor who supplies commodities or services identified on
374 the Impossible to Bid List. Council approval is required when the contract will exceed
375 \$25,000. Provided; that the city attorney, with the consent of the city manager, may
376 contract directly with an attorney, law firm, expert witness, or legal consultant
377 considered necessary and suitable in pursuing and defending the city's interests without
378 first seeking council approval.

379
380 **Sec. 2-486 – Direct Purchases.**

381
382 Notwithstanding any provision of this code to the contrary, the council may
383 approve by resolution to forego these bidding requirements and contract directly with a
384 responsible vendor when, in the council's sound judgment, it is in the city's best interest
385 to procure certain commodities or services directly from the identified responsible
386 vendor: Provided, That this section does not apply to the procurement of construction
387 contracts, which are governed by W. Va. Code § 5-22-1, or contracts for architectural or
388 engineering services, which are governed by W. Va. Code § 5G-1-1 et seq. and Section
389 3-15 of this code. Provided further; that this section does not apply when federal
390 statutes or regulations require the city to follow a competitive selection process to apply
391 for or administer federal grants or aid.

392
393 **Sec. 2-487 – Grounds for Debarment.**

394
395 (a) Grounds for debarment are:
396 (1) Conviction of an offense involving fraud or a felony offense related to
397 obtaining or attempting to obtain a public contract or subcontract;
398 (2) Conviction of any federal or state antitrust statute relating to the submission
399 of offers; such as price fixing, bid rigging, and market allocation schemes;
400 (3) Conviction of an offense involving embezzlement, theft, forgery, bribery,
401 falsification, or destruction of records, making false statements, or receiving stolen
402 property related to the performance of a contract;
403 (4) Conviction of a felony offense demonstrating a lack of business integrity or

business honesty that affects the present responsibility of the vendor or subcontractor;
(5) Violation of the terms of a public contract or subcontract for:
(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;
(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;
(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder; or
(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify debarment; or
(6) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.
(b) For the purposes of this section, the term "conviction" includes, but may not be limited to, the entering of a deferred prosecution agreement or a plea of guilty or nolo contendere, including pleading to a lesser or related offense in exchange for some form of prosecutorial leniency.
(c) Pursuant to W. Va. Code § 5A-3-33f, vendors debarred by the West Virginia Purchasing Division are automatically debarred by the city and may not be awarded contracts.

Sec. 2-488. - Debarment Procedures.

(a) The city manager shall notify the vendor by certified mail of the following:
(1) The reasons for the proposed debarment in sufficient detail to put the vendor on notice of the conduct or transactions upon which the proposed debarment is based;
(2) The causes relied upon for the proposed debarment;
(3) That within thirty calendar days after receipt of the notice, the vendor may submit in writing information and argument in opposition to the proposed debarment;
(4) The procedures governing debarment decision-making; and
(5) The potential effect of the proposed debarment.
(b) The city manager may hold a hearing if the vendor contests the debarment. In any debarment decision, the city manager shall make a specific finding, based on the substantial record, whether the public interest requires that the debarment decision extend to all commodities and services of the vendor, or whether the public interest allows the debarment decision to be limited to specific commodities or services.
(c) In any debarment decision, the city manager shall specify the length of the debarment period. The debarment period must be for the period of time that the city manager finds necessary and proper to protect the public from a non-responsible vendor.
(d) Proof of grounds for debarment must be clear and convincing.
(e) The debarment decision of the city manager is appealable to the Circuit Court

450 of Kanawha County, West Virginia, within 30 calendar days of receiving the decision,
451 and the appeal will be governed by the procedure established in W. Va. Code § 29A-5-
452 4.
453