

ORDINANCE NO. 381

AN ORDINANCE REPEALING CHAPTER 40,  
PROCUREMENT OF MATERIAL AND AWARD OF CONTRACT,  
AND ADOPTING A NEW CHAPTER 40,  
PROCUREMENT OF MATERIAL AND AWARD OF CONTRACT

WHEREAS, the Ocean View Charter Section, at Section 6.101, Contracts in General, provides that all purchases and contracts for Town government shall be made by the Town Manager and that the Council may provide, by ordinance, for rules and regulations regarding the use of competitive bidding and contracts for all Town purchases and contracts; and

WHEREAS, the Town Council adopted Ordinance No. 135 on November 12, 2002, as amended by Ordinance No. 187, adopted November 1, 2005, establishing the rules and regulations regarding the use of competitive bidding and awarding contracts and for the procurement of professional services; and

WHEREAS, pursuant to the authority granted to it at 29 Del. C. §6913, the Contracting and Purchasing Advisory Council of the State of Delaware has established new threshold amounts; and

WHEREAS, it is appropriate for the Town Council of Ocean View to repeal the prior ordinance and to adopt a new ordinance to conform to the threshold amounts established by the Contracting and Purchasing Advisory Council and to authorize the use of the State's Procurement Portal.

**NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE TOWN COUNCIL OF THE TOWN OF OCEAN VIEW THAT:**

Section 1. Repeal Chapter 40, Ocean View Code, entitled "Procurement of Material and Award of Contract" by repealing the ~~stricken-through~~ text and in lieu thereof adopting the underlined text, as follows:

~~§40-1. Material and nonprofessional services.~~

~~The procedures for public competitive bidding and contract awards by the Town of Ocean View are established as follows:~~

~~A. Competitive bidding is not required for the procurement of goods and services for less than \$7,500.00.~~

~~B. Competitive bidding is required for procurement of goods and services for more than \$7,500 and less than \$15,000. Quotes shall be obtained from at least three vendors. The town manager shall record each vendor's name, address, and telephone number; contact person (if other than vendor); date of quoted price, and proposed delivery time. If competitive quotes cannot be obtained, justification for purchase shall be documented.~~

~~C. Competitive bidding is required for the procurement of goods and services for more than \$15,000. Written sealed bids shall be obtained from vendors after advertisement. Advertising of requirements shall be published at least once a week for two consecutive weeks in a newspaper of general circulation. The following procedures apply:~~

- ~~1. Each bid must be time stamped upon receipt and stored unopened until the opening.~~
- ~~2. All bids shall be opened publicly in the presence of at least one witness on the date and at the time and location designated in the invitation to bid.~~
- ~~3. The Town Council of Ocean View shall select the successful bidder.~~
- ~~4. In determining the lowest responsible bidder, in addition to price, the Town Council or the authorized representative for the Town shall consider:~~
  - ~~a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required.~~
  - ~~b) Whether the bidder can perform the contract or provide the service within the time specified without delay or interference.~~
  - ~~c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.~~

- d) ~~———— The quality of performance or previous contracts or services.~~
  - e) ~~———— The previous and current compliance by the bidder with the laws and ordinances relating to the contract or services; and~~
  - f) ~~———— Any other information that may have a bearing on the decision to award the contract.~~
5. ~~———— The Town Council of Ocean View may reject all bids or cancel bid procedures at any time.~~
6. ~~———— If all the bids are rejected, the Town Council may order a readvertisement for bids.~~
7. ~~———— Bidder may withdraw, in writing, its bid at any time before bid opening. Bidder may also request withdrawal after bid opening, but acceptance of such withdrawal is at the discretion of the Town.~~
8. ~~———— Late bids shall not be opened and will be returned to the submitting party.~~
9. ~~———— If contract is to be ratified, the contract will be awarded within 30 calendar days of bid openings.~~
10. ~~———— Bids shall not be open to the public inspection until fully executed contract has been received.~~
- D. ~~Exceptions:~~
- 1. ~~———— Competitive bidding shall not be required for:~~
    - a) ~~———— Purchases or contracts involving less than \$7,500.~~
    - b) ~~———— Purchases of supplies and services that are available through only one source;~~
    - c) ~~———— Emergency situations in which it is essential to the health, safety, or welfare of the people that immediate action is taken;~~
    - d) ~~———— Purchases based on state contracts that are established by a legal or competitive process;~~
    - e) ~~———— Contract exceptions under Article VI, Section 6.102 of the Ocean View Charter; and~~
    - f) ~~———— Purchases in which competitive sealed bidding is not practical or in the best interest of the Town.~~

~~2. Multiple source contracting.~~

~~3. A contract for a particular material or nonprofessional service to two or more firms if the Town determines that such an award is in the best interest of the Town. The right to make such multiple source contracts must be outlined in the invitation to bid advertisements.~~

~~E. Public works projects in excess of \$100,000.~~

~~1. The Town must comply with the competitive bid procedures in addition to the following:~~

~~a) Must comply with advertising procedures for competitive bids and may also maintain a register of prospective bidders, provided that such a list is not used in a way that unfairly limits the competitiveness of the contract. The announcement must list any pre-qualifications or registration requirements necessary to compete for the bid.~~

~~b) Must have suitable plans and specifications prepared by licensed and registered architects and/or engineers (with their signatures and seals affixed thereto) for all contracts pursuant to this section. The provision may be waived if the work is to be performed in accordance with identical plans for a previous project so signed and sealed or, alternatively, if the Town Council determines in writing that the project does not require architectural or engineering services.~~

~~c) May retain the professional aid of a general contractor or other qualified firm to estimate and analyze cost, economic design and construction.~~

~~d) Must have plans, descriptions of work, and specifications that include explicitly the provisions of federal, state, and local environmental laws and regulations, which affect the project. Town may issue a change order to force successful bidder to comply with such rules or laws. The cost of such a change order to the awarding agency shall include contractor's cost plus a reasonable sum for overhead and profit. However, any additional activity undertaken by the contractor will not be compensated unless written authorization has been issued.~~

~~e) May retain a portion of the payments to be made to a contractor in a public works contract, which shall be paid from time to time as it deems equitable. Town may~~

~~also establish a time schedule for completion of the project. If the deadline is not met, the town may keep the retainage at its discretion.~~

~~f) ——— Must require a deposit bid bond to accompany all bids, and successful bidders must post a performance bond.~~

~~g) ———~~

~~§ 40-2. Professional services.~~

~~The award of contracts involving professional services, such as accounting, architecture, auditing, engineering, law, planning and surveying, shall be excluded from the requirements set forth above, except that the Town Manager shall advertise the intention to negotiate such contracts of greater than \$7,500 for professional services in accordance with § 40-1A(1) above.~~

#### Chapter 40

### PROCUREMENT OF MATERIAL, SERVICES, AND AWARD OF CONTRACTS

#### § 40-1. Material and non-professional services.

The procedures for the award of contracts and the procurement of material and services by the Town Manager are as follows:

A. For the award of small public works contracts and non-professional service, contracts for material and non-professional services is as follows:

1. If less than \$7,500, open market purchase;

2. If greater than \$7,500, but less than \$24,999, the Town

Council, or its designee, may obtain written proposals from not less than three (3) vendors.

The Town Council, or its designee, shall record each vendor's name, address, and telephone number; contact person (if other than vendor); date of quoted price, and proposed delivery time. If competitive quotes cannot be obtained,

justification for purchase shall be documented. A contract shall be awarded to the lowest responsive and responsible vendor.

B. For the award of large public works contracts for material contracts for material, labor, and non-professional services is as follows:

1. If less than \$50,000, open market purchase; or
2. If greater than \$50,000, but less than \$99,999, the Town Council, or its designee, may obtain written proposals from not less than three (3) vendors; or
3. If \$100,000 or greater, the Town Council, or its designee, shall comply with the requirements of the State Procurement Act, 29 Del. C. Chapter 69, Subchapters III and IV, as amended; provided, however, the requirements of Section 6960 shall not apply to the Town Council of Ocean View unless otherwise required by State or Federal law or as a condition of the acceptance of any loan or grant from any State or Federal agency.

§ 40-2. Professional services.

The award of contracts involving professional services, such as accounting, architecture, auditing, engineering, law, planning and surveying, where the probable fees, including reimbursables is:

1. Less than \$50,000, open market engagement; or
2. Greater than \$50,000, shall comply with the requirements of the large professional service procurement process as set out in the State Procurement Act, 29 Del. C. § 6981.

§ 40-3. Procurement Portal.

When qualified to do so by the State of Delaware, the Town Council or its designee, subject to Section 40-4 hereof, is authorized to procure material and services through Delaware's Procurement Portal.

**§ 40-4. Award of Contracts.**

**All contracts in an amount greater than \$7,500 for material, including machinery or equipment of every kind, labor, or non-professional services, small public works, large public works, or for professional services, shall be reviewed and approved by the Town Council before award. The Town Council may reject any or all bids or cancel bid procedures at any time.**

Section 2. This Ordinance shall be effective upon its adoption by a majority of all members elected to the Town council of Ocean View.

**TOWN OF OCEAN VIEW**

By:   
Mayor

Attest:   
Town Clerk

First Reading: 10.12.2021

Second Reading: 11.9.2021

Adopted: 11.9.2021