

**ORDINANCE NO. 2139**

**ORDINANCE AMENDING CHAPTER 34, ARTICLE IV OF THE NORTHPOR  
MUNICIPAL CODE PERTAINING TO PURCHASING REGULATIONS**

**WHEREAS**, the City of Northport wishes to adopt a procurement and regulatory practices to be in compliance with the Code of Federal Regulations (CFR § 200) for grant eligibility; and

**WHEREAS**, the adoption of this ordinance will ensure that the City of Northport is in compliance with the Code of Federal Regulations § 200 to allow for grant eligibility and compliance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF NORTHPOR, ALABAMA AS FOLLOWS:**

1. The City amends Chapter 34, Article 4 of the Northport Municipal Code, as set forth in Exhibit "A" which is attached hereto and incorporated by reference as if fully set out verbatim.
2. This Ordinance shall become effective immediately upon passage and publication.

**ORDAINED** this the 21<sup>st</sup> day of March, 2022.

**CITY COUNCIL OF THE  
CITY OF NORTHPOR**

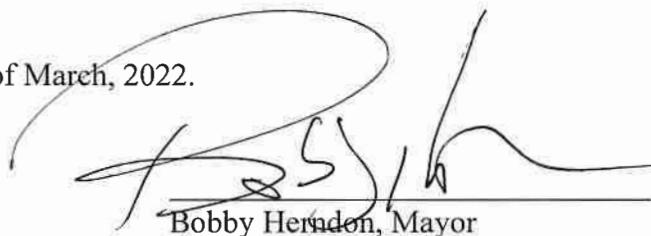
BY:

  
Jeff Hogg, Its President

**ATTEST:**

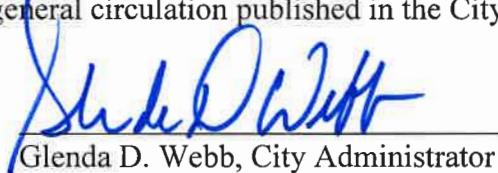
  
Glenda D. Webb, City Administrator

APPROVED this the 21<sup>st</sup> day of March, 2022.



Bobby Herndon, Mayor

I hereby certify that the above and foregoing Ordinance was published on March 30, 2022 in the Northport Gazette, a newspaper of general circulation published in the City of Northport.



Glenda D. Webb, City Administrator

1st Reading: March 7, 2022

Motion By: Washington

2nd Reading: March 21, 2022

Motion By: Hinton

Second By: Washington

Publication: March 30, 2022

# **EXHIBIT “A”**

## ***ARTICLE IV. PURCHASING REGULATIONS<sup>1</sup>***

### **Sec. 34-86. Designated; powers and duties.**

The city administrator-clerk is hereby designated as the purchasing agent of the city, and is charged with the overall direction and execution of the purchasing activities of the various municipal departments, except as exempted in this article. Any portion of these duties may be delegated. The city administrator-clerk is charged, directed, and empowered to do the following and to account to the mayor and city council for the following:

- (1) To purchase all supplies, goods, services, and commodities, except those exempted in this article, on the most favorable pricing, delivery, and other terms to the city, consistent with budgetary considerations of the city, and with the highest quality and at the least expense.
- (2) To establish and enforce specifications with respect to items to be purchased.
- (3) To encourage full and open competition among vendors.
- (4) To maintain a list of persons desiring to bid on the various purchases and to keep such list current.
- (5) To prescribe forms for use by the various departments in requesting items and for use in purchasing activities, with a view toward unifying and integrating purchasing activities with a budgetary control system.
- (6) To adopt procedures, subject to council review at any time, to encourage planning purchases in advance, and to facilitate the acquisition of needed goods and services.
- (7) To keep the mayor and council informed on purchasing practices and to secure the benefits for the city of developments in purchasing practices among other units of government.
- (8) To take full advantage of discounts through quantity purchases, consistent with budgetary constraints. To ensure the city receives all federal and other tax exemptions to which it is entitled.
- (9) To require proof of the receipt of materials ordered prior to processing such orders for payment, and to require persons receiving such goods and/or services to certify on a convenient form that the materials have been received according to the kind, quality, and quantity ordered.
- (10) To develop a perpetual inventory of any equipment, furniture, and other property, the acquisition cost of which is \$500.00 or greater, to maintain such records and to annually audit such records and make a full report to the mayor and city council.
- (11) To communicate fully with all officers and departments of the city as to procedures, policies, and forms, to make any recommendations necessary or to perform any duties required by the mayor and council.

(Code 1990, § 5-21; Ord. No. 2089 , § 2(Exh. A), 8-2-21)

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<sup>1</sup>Cross reference(s)—City administrator-clerk, § 2-111 et seq.

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### **Sec. 34-87. Absence of agent.**

The city-administrator clerk shall ensure that another bonded city employee employed pursuant to the civil service system is designated and able to act as agent in the event the city-administrator clerk is temporarily unable to act as purchasing agent.

(Code 1990, § 5-24)

### **Sec. 34-88. Requisitions.**

It is the duty of all officers and departments of the city to submit plans for needed goods and services as far in advance as possible to allow appropriate time for acquisition of such items. All requests for goods and/or services shall be requested by any person on a convenient form supplied by the purchasing agent. Before a purchase order is issued, the following approvals are necessary:

- (1) For requests of \$2,500.00 or less, the approval of the department head shall be sufficient.
- (2) For requests greater than \$2,500.00, and not more than \$5,000.00, the approval of the purchasing agent shall be necessary.
- (3) For requests greater than \$5,000.00, the approval of the council shall be necessary. Nothing shall prevent the purchasing agent from taking bids prior to such approval, provided that no order is issued without such approval.
- (4) In the event of an emergency, or if the best interests of the city require immediate action, the purchasing agent may approve amounts in excess of \$5,000.00 provided that the council is notified of this action and the action is later placed on the council agenda for approval and ratification by the city council.
- (5) The splitting of purchases into smaller orders to avoid these requirements is strictly prohibited.

The purchasing agent may revise requisitions as to quality, quantity, terms, and other factors. The city administrator-clerk shall also determine, prior to issuing any purchase order, that sufficient unencumbered funds are available for such purchase.

(Code 1990, § 5-22; Ord. No. 1710 § 1, 9-21-09; Ord. No. 2089, § 2(Exh. A), 8-2-21)

### **Sec. 34-89. Procedure for issuing purchase orders.**

After requests or requisitions have been approved, the purchasing agent shall undertake the following procedures for issuing purchase orders, with additional procedures for federally originated funds included in Sec. 34-91:

- (1) Purchases less than \$500.00, no price check required.
- (2) Purchases over \$500.00, but less than State of Alabama bid law and Public Works law requirements, competitive bids or price quotes required, unless waived by the purchasing agent or as otherwise specified.
- (3) Purchases meeting State of Alabama bid law requirements per Code of Ala. 1975, § 41-16-50 and State of Alabama Public Works law requirements in Code of Ala. 1975, tit. 39 shall follow procedures described therein.
- (4) Items on state finance department contracts may be purchased by the purchasing agent without bids.

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- (5) Exemptions provided in state law are hereby adopted, except as to the prices at which bids must be secured.
- (6) The purchasing agent may make emergency purchases without bids, if he finds the immediate public health, safety or welfare demands it, and reports such fact in writing to the council at its next meeting. The council may declare, under state law, that an emergency exists and may direct purchases be made without bids where the council specifically complies with applicable state law and so directs the purchasing agent.

(Code 1990, § 5-23; Ord. No. 2089 , § 2(Exh. A), 8-2-21)

### **Sec. 34-90. Bid procedure.**

Where bidding is required under this article, the procedure for receipt of bids shall be as follows:

- (1) At minimum, a notice shall be mailed to each person on the active bid list and shall be posted in a conspicuous place in city hall.
- (2) For public works projects in excess of \$50,000, under the requirements of Code of Ala. 1975, tit. 39, the city shall advertise for sealed bids at least once each week for three consecutive weeks in a newspaper of general circulation in the county, describing the project, stating procedures for obtaining plans and specifications, stating the time and place for bids to be received and opened, stating whether prequalification is required and where prequalification information is available.
- (3) For public works projects in excess of \$500,000, under the requirements of Code of Ala. 1975, tit. 39, the city shall advertise for sealed bids at least once each week for three consecutive weeks in a newspaper of general circulation in the state, describing the project, stating procedures for obtaining plans and specifications, stating the time and place for bids to be received and opened, stating whether prequalification is required and where prequalification information is available.
- (4) A reasonable period of time shall be allowed and prescribed in the notice for response. Return bids must be sealed and shall be identified on the outside envelope as such.
- (5) Bid openings may be scheduled during the business day at the purchasing agent's office, but certified tabulations shall be presented to the council at its next meeting and the council shall, by duly adopted motion, authorize the purchase and acceptance of the bids.

(Code 1990, § 5-23)

### **Sec. 34-91. Procurement of Contracts with Federally Originated Funds.**

- (1) *Applicability.* The requirements of this section apply to procurements related to the expenditure of all federally originated funds subject to 2 CFR § 200.318 requirement.
- (2) *City procurement procedures to conform to federal law.* The city will use its own procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in 2 CFR § 200.318.
  - a. *Contract administration system.* The city will maintain a contract administration system through the establishment of a city representative for each contract. The city representative will monitor contract performance and consult with the office of the city attorney as required to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

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- b. *Standards of conduct; conflicts of interest.* Elected officials, staff or agents of the city are prohibited from personally benefitting from procurements under this section. No employee, officer or agent of the city shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest as defined in 2 CFR § 200.318(c)(1), real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, or any member of his or her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The city's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts. Violations of such standards by the officers or employees of the city, or agents, or by contractors or their agents shall be reported to the state ethics commission pursuant to Code of Ala. 1975, § 36-25-17.
- c. *Unnecessary/duplicative items.* Prior to award, the city shall perform a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- d. *Responsible contractors.* The city will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The city will require contractors to execute a "disbarment and suspension statement" certifying/verifying that the contractor is not suspended or disbarred or otherwise excluded from or ineligible for participation in federal assistance programs or activities. See 2 CFR § 200.213.
- e. *Records.* The city will maintain records sufficient to detail the history of a procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- f. *Protest procedures.* Protests made under this section shall be presented in writing to the designated city representative within three (3) days of bid opening. Further protest may be handled and resolved pursuant to the same procedure established in Code of Ala. 1975, § 41-16-61. To wit, any taxpayer of the area within the jurisdiction of the city and any bona fide unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the appropriate court to enjoin execution of any contract entered into in violation of the provisions of this section. The city shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust this remedy before pursuing a protest with the federal agency.
- g. *Intergovernmental agreements.* The city shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- h. *Excess and surplus property.* The city shall use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- i. *Value engineering clauses.* The city shall use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions whenever such use is feasible.

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- j. *Time and materials type contracts.* The city may use a time and material type contract as defined in 2 CFR § 200.318(j) only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.
- k. *Procurement of recovered materials.* The city shall follow the requirements of 2 CFR § 200.322 with regard to the procurement of recovered materials.

(3) *Competition.* All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 2 CFR § 200.319.

- a. *Contractor disqualification.* In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements.
- b. *Situations restrictive of competition.* Some of the situations considered to be restrictive of competition, and therefore prohibited, include but are not limited to:
  1. Placing unreasonable requirements on firms in order for them to qualify to do business;
  2. Requiring unnecessary experience and excessive bonding;
  3. Noncompetitive pricing practices between firms or between affiliated companies;
  4. Noncompetitive awards to consultants that are on retainer contracts;
  5. Organizational conflicts of interest;
  6. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement; and,
  7. Any arbitrary action in the procurement process.
- c. *Geographical preferences.* The city will not impose in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. Nothing in this section preempts state licensing laws.
- d. *Written selection procedures.* The city will establish written selection procedures for procurement transactions in the form of a request for proposal ("RFP"), request for statement of qualifications ("RFQ"), sealed bid, or other pre-established procurement document for each procurement transaction. These procedures will ensure that all solicitations:
  1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and,

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2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

e. *Prequalification.* If the city chooses to prequalify contractors, then the city will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the city will not preclude potential bidders from qualifying during the solicitation period.

(4) *Methods of procurement.* Any method of procurement under this section shall comply with the requirements of 2 CFR § 200.320 and any other applicable federal, state or local law, rule or regulation, whichever requirement is stricter.

- a. *Procurement by micro-purchases.* Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (2 CFR § 200.67 micro-purchase). The city has established \$500 as the micro-purchase threshold at section 34-89(1). To the extent practicable, the city shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the city considers the price to be reasonable.
- b. *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. To the extent the Alabama Competitive Bid and/or Public Works Laws establish stricter standards for procurement by small purchase procedures, the city shall apply the stricter state law standards. Generally, all expenditure of funds of whatever nature for labor, service, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000.00) or more must be competitively bid pursuant to the requirements of the state bid law.
- c. *Procurement by sealed bids (formal advertising).* Bids shall be publicly solicited and a firm-fixed-price contract (lump sum or unit price) shall be awarded to the responsible, responsive bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method shall be the preferred method for procuring construction. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bid. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond. All bids will be publicly opened at the time and place prescribed in the invitation for bids. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason. To the extent the Alabama Competitive Bid and/or Public Works Laws establish stricter standards for procurement by sealed bids (formal advertising), the city shall apply the stricter state law standards. Before entering into any contact for a public works involving an amount in excess of fifty thousand dollars (\$50,000.00), the city shall advertise for sealed bids. In order for sealed bidding to be feasible, the following conditions must be present:
  1. A complete, adequate, and realistic specification or purchase description is available;
  2. Two or more responsible bidders are willing and able to compete effectively and for the business; and

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- 3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- d. *Procurement by competitive proposals.* This method shall be conducted with more than one source submitting an offer, and with either a fixed-price or cost-reimbursement type contract to be awarded. This method shall be generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
  - 1. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
  - 2. Proposals will be solicited from an adequate number of qualified sources;
  - 3. The method for conducting technical evaluations of the proposals received and for selecting awardees will be established in the request for proposal ("RFP"), request for statement of qualifications ("RFQ"), or other pre-established procurement document for each procurement transaction.
  - 4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,
  - 5. The city will use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
  - 6. To the extent the Alabama Competitive Bid and/or Public Works Laws establish stricter standards for procurement by competitive proposals, the city shall apply the stricter state law standards.
- e. *Procurement by noncompetitive proposals.* Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Approval by the purchasing agent is required before using any noncompetitive procurement method based on the following circumstances. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
  - 1. The item is available only from a single source;
  - 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - 3. The awarding agency authorizes noncompetitive proposals; or
  - 4. After solicitation of a number of sources, competition is determined inadequate.

Cost analysis (i.e. verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits) is required.

(6) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* Pursuant to 2 CFR § 200.321, the city will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include: placing qualified small and minority businesses and women's business enterprises

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on solicitation lists; assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; using the services and assistance of the small business administration and the minority business development agency of the department of commerce; and, requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

(6) Pursuant to 2 CFR § 200.322, as appropriate and to the extent consistent with law, the city shall, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

a. For purposes of this section:

- i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(7) Pursuant to 2 CFR § 200.323, the city and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) *Contract cost and price.* Pursuant to 2 CFR § 200.324, the city shall perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the city must make independent estimates before receiving bids or proposals. The city will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles. The city may reference its own cost principles that comply with the applicable federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used."

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(9) *Federal awarding agency or pass-through entity review.* Pursuant to 2 CFR § 200.325, the city must make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

(10) *Bonding requirements.* Pursuant to 2 CFR § 200.326, for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the following minimum requirements shall apply:

- a. The city shall require a bid guarantee from each bidder equivalent to five (5) per cent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. The city shall require a performance bond on the part of the contractor for one hundred (100) per cent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. The city shall require a payment bond on the part of the contractor for one hundred (100) per cent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- d. To the extent the Alabama Competitive Bid and/or Public Works Laws establish stricter standards for bonding requirements, the city shall apply the stricter state law standards.

(11) *Contract provisions.* Contracts procured pursuant to 2 CFR § 200.327 shall contain the following contract provisions:

- a. *Violation or breach of contract terms.* Contracts for more than the simplified acquisition threshold set in the Federal Acquisition Regulation at 48 CFR § 2.101 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. To wit, if the contractor is adjudged as bankrupt, or makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the agreement, or is assessed liquidated damages as set forth herein, then the city may, without prejudice to any of its other rights or remedies and after giving the contractor and his surety, if any, seven (7) days' written notice, during which period the contractor fails to cure the violation, terminate the employment of the contractor. In such case, the contractor shall not be entitled to receive any further payment from the city.
- b. *Termination for cause and for convenience.* For all contracts in excess of ten thousand dollars (\$10,000.00), the city reserves the right with or without cause to terminate the agreement by giving written notice to contractor of such termination at least fifteen (15) days before the effective date thereof. In the event of termination, contractor shall cease performing any work pursuant to the agreement and be entitled to compensation for services rendered through the effective date of termination.
- c. *Access to records.* Pursuant to 2 CFR § 200.337, the city, any subgrantee, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the contractor

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which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

- d. *Retention of records.* Pursuant to 2 CFR § 200.334, the contractor is required to retain all records as required by applicable federal law for three (3) years after the city or any or subgrantee makes final payments and all other pending matters are closed.
- e. *Equal employment opportunity.* Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- f. *Davis-Bacon Act.* When required by federal program legislation, all prime construction contracts in excess of two thousand dollars (\$2,000.00) awarded by the city must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The city must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The city must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The city must report all suspected or reported violations to the federal awarding agency.
- g. *Contract Work Hours and Safety Standards Act.* Where applicable, all contracts awarded by the city in excess of one hundred thousand dollars (\$100,000.00) that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under forty (40) U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half (1½) times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- h. *Rights to inventions made under a contract or agreement.* If the federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the city wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of

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parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the city must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- i. *Clean Air Act and the Federal Water Pollution Control Act.* Contracts and subgrants of amounts in excess of one hundred fifty thousand dollars (\$150,000.00) must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency (EPA).
- j. *Debarment and suspension.* A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the system for award management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- k. *Byrd anti-lobbying amendment.* Contractors that apply or bid for an award exceeding one hundred thousand dollars (\$100,000.00) must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

**Secs. 34-92—34-115. Reserved.**