

ORDINANCE NO. 677-2024

AN ORDINANCE ESTABLISHING A PROCUREMENT POLICY FOR THE CITY OF SPANISH FORT, ALABAMA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. Definitions.

The following terms shall have the meaning ascribed to them herein unless the context clearly indicates otherwise:

- (1) *Emergency purchase.* A purchase made without following normal purchasing procedures in order to obtain goods or services to meet an urgent and unexpected requirement where health and public safety or the conservation of public resources are at risk.
- (2) *Public works contract.* A contract between the city and a contractor pursuant to Code of Ala. 1975, § 32-2-1 et seq., for the construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds.
- (3) *Purchase order.* A written authorization on a form approved by the City Clerk/Treasurer for a vendor to provide materials, equipment, supplies, other personal property, or services to be paid for with city funds at a specified price over a specified time period. Acceptance of the purchase order constitutes a purchase contract and is legally binding on all parties. Each Department shall maintain a number system for purchase orders so that each purchase order has a unique identifying number.
- (4) *Sole source.* Those goods and/or services authorized to be purchased without competitive bid pursuant to applicable provisions of Code of Ala. 1975, § 41-16-51(13).
- (5) *State bid limit.* The ceiling amount, as authorized by Code of Ala. 1975, § 41-16-50, above which all purchases of labor, services, work, or for the purchase of materials, equipment, supplies or other personal property within a fiscal year (with the exception of public works contracts and contracts for professional services exempt from the bid law), are required to be competitively bid before a purchase order can be obtained from the purchasing division.

SECTION 2. Purchasing Generally.

- (a) The provisions herein establish policies regulating the procedures to be followed in the purchase of materials, equipment, supplies, other personal property, or services, depending on the costs of the items to be purchased.
- (b) The splitting of purchases into smaller orders to avoid these requirements is strictly prohibited.
- (c) A purchase order will be generated and signed by the Mayor or his designee under the established procedures.
- (d) The purchasing procedure provisions hereof do not apply to public works contracts made pursuant to Code of Ala. 1975, § 32-2-1 et seq., or to contracts for the provision of professional services pursuant to Code of Ala. 1975, § 41-16-51, if authorized by the City Council.

SECTION 3. Purchase orders.

Except as otherwise stated herein, a purchase order signed by the Mayor or his or her designee is required in every instance in which there is a need to purchase materials, equipment, supplies, other personal property, or services with City funds exceeding five thousand dollars (\$5,000.00) per purchase, except for purchases made with an authorized city procurement credit card. Purchases made with an authorized city procurement card shall not exceed five thousand dollars (\$5,000.00). A signed purchase order must be received by a Department Head prior to placing any order exceeding five thousand dollars (\$5,000.00) with any vendor or supplier unless the purchase can be classified as an emergency.

The Mayor or his respective designees, may declare exceptions to the five thousand dollar (\$5,000.00) purchase order requirement and procurement card limit at his discretion for payment of invoices for recurring expenses such as, but not limited to, fuel, insurance premiums, licenses,

membership fees, and subscriptions. Utility payments and payments routinely withdrawn on a monthly or quarterly basis through an electronic funds withdrawal, such as monthly utility payments, tax payments, health insurance payments and/or retirement system payments do not require a purchase order.

Purchase orders will only be issued for the purchase of materials, equipment, supplies, other personal property, or services, pursuant to the provisions hereof for legitimate public purposes and solely for the use and benefit of the City and its operations and shall not inure to the private or personal benefit of any employee, person, firm or corporation.

Purchase Orders shall be initiated and properly documented by the requisitioning department head or his designee and sent to the City Clerk's office.

For items costing in excess of \$500.00, alternate price quotations must be obtained and attached to the Purchase Order from at least two (2) additional vendors to ensure the maximum value for each public dollar spent.

Nothing prohibits a department from submitting a requisition to the purchasing division of the department of accounting and finance and obtaining a purchase order to purchase items on behalf of the city should they desire to do so even though the same is not required.

SECTION 4. Purchases in excess of the state bid limit.

Departments seeking to purchase materials, equipment, supplies, other personal property, or services that may exceed the state bid limit pursuant to Code of Ala. 1975, § 41-16-50, and are not otherwise exempt pursuant to Code of Ala. 1975, § 41-16-51, (the bid law limit for heavy-duty off-highway construction equipment is as established by Code of Ala. 1975, § 41-16-52) within a fiscal year are required to competitively bid the purchase of said materials, equipment, supplies, other personal property, or services through the City Clerk's Office before a purchase order can be issued. Public works contracts and other items exempt from the Alabama bid law are exempt from this requirement. All public works contracts must be procured pursuant to Title 39 of Code of Alabama. Prior to initiating the procurement process for any public works contract, professional service contract, or other bid law exempt item, departments are required to contact the City Clerk's Office for instructions and guidance in the procurement process.

SECTION 5. Sole source purchases.

Purchase Orders may be submitted, and purchase orders may be issued for materials, equipment, supplies or other personal property, services and commodities in excess of the bid law limit for which there is only one vendor or supplier and contractual services and purchases of personal property which by their very nature are impossible to award by competitive bidding pursuant to Code of Ala. 1975, § 41-16-51(13). Provided; however, proper documentation and verification of the facts supporting the same shall be submitted to City Clerk's Office and approved by the Mayor and/or City Council.

Such documentation must demonstrate that the service, good or item sought to be acquired must be unique; that uniqueness must be substantially related to the intended purpose, use and performance of the service, good or item such that the department requesting the same must be able to show that other similar goods, services or items cannot perform the desired objectives.

SECTION 6. Emergency purchases.

In cases of emergency affecting the public health, safety or convenience, so declared in writing by the City Council, setting forth the nature of the danger to public health, safety or convenience involved in delay, requisitions may be submitted and purchase orders issued for the purchase of materials, services, equipment, supplies or other personal property to the extent necessary to meet the emergency without public advertisement pursuant to Code of Ala. 1975, § 41-16-53. Provided; however, proper documentation and verification of the facts supporting the same shall be submitted to the City Clerk's Office and approved by the Mayor and/or City Council.

SECTION 7. Administration

The City Clerk's Office, with the approval of the Mayor, is authorized to promulgate rules, regulations and policies in furtherance of the provisions hereof in order to implement the same. Violations of this article may result in discipline pursuant to Section 19-90.

SECTION 8. Contract procurement standards.

(a) *Contract procurements, generally.*

- (1) All procurements of professional service contracts shall comply with all applicable federal, state and local laws, rules and regulations. To the extent this chapter may conflict with any valid superseding federal or state law, it shall automatically conform to such federal or state law.
- (2) All procurements of public works construction and other non-professional service contracts shall comply with all applicable federal, state and local laws, rules and regulations. To this extent this chapter may conflict with any valid superseding federal or state law, it shall automatically conform to such federal or state law.
- (3) Unless otherwise required by federal law, rule, and/or regulation, all city contract procurements shall comply with applicable state competitive bid and public works laws.
- (4) Unless otherwise required by a federal law, rule or regulation, competitive bidding shall not be required to procure the following:
 - a. Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.
 - b. Contracts for fiscal or financial advice or services.
 - c. The selection of paying agents and trustees for any security issued by the city.
 - d. Professional services contracts for codification and publication of the laws and ordinances of the city.
 - e. The purchase of insurance.
- (5) Unless otherwise required by a federal law, rule or regulation, the city council may adopt a resolution authorizing and awarding a professional service contract as described in subsection (a)(4) in its discretion and without utilization of a formal or informal competitive bid process.
- (6) Notwithstanding the foregoing, the city may, in its discretion, issue a request for proposal ("RFP") or request for statement of qualifications ("RFQ") to introduce a competitive element into the selection of any professional service. Generally, the RFP or RFQ may require a statement of experience and qualifications, references, a price/hourly rate quote (if applicable), and any other requirement deemed appropriate by the city that does not conflict with federal, state or local law; provided, however, that the final form of any lawful RFP or RFQ shall be in the discretion of the city and may or may not include any of the abovementioned elements, and may include additional elements.

(b) *Procurement of contracts subject to 2 CFR § 200.318 requirements.*

- (1) *Applicability.* The requirements of this section apply to procurements related to the expenditure of all federally originated funds.
- (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.
 - 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 in excess of that allowed under Alabama ethics laws 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 *Alabama Code* (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.
 - 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. In the event that procedures are not established in the procurement document, written proposals will be rated by a pre-selected panel of qualified city employees, officers and/or agents. The panel will agree upon a rating system prior to review of proposals that will consist of either a numerical grading system or a pass/fail grading system, or a combination of the two (2). 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,
 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 micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (definitions). It is three thousand dollars (\$3,000.00) except as otherwise discussed in Subpart 2.1 of that

regulation, but this threshold is periodically adjusted for inflation. 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
 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. In the event that procedures are not established in the procurement document, written proposals will be rated by a pre-selected panel of qualified city employees. The panel will agree upon a rating

system prior to review of proposals that will consist of either a numerical grading system or a pass/fail grading system, or a combination of the two (2);

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. In its discretion, the city may 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. 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.
- f. *Procurement by Purchasing Cooperative.* Where not prohibited by federal or state laws or regulations, procurement may be allowed in accordance with the provisions of Alabama Code (1975) §§ 41-51-16(a)(16). Prior to obtaining a purchase order, the department seeking the purchase shall obtain documentation from the Alabama Department of Public Examiners verifying that the proposed purchasing cooperative is approved. Additionally, documentation shall be obtained from the purchasing cooperative verifying that the contract was competitively bid in accordance with state and federal law, including, but not limited to, the provisions of 2 CFR § 200.320.
- g. *Procurement through General Services Administration Contract.* Where not prohibited by federal or state laws or regulations, procurement may be allowed in accordance with the provisions of Alabama Code (1975) §§ 41-51-16(a)(17) The purchase of goods or services, other than wireless communication services, whether voice or data, from vendors that have been awarded a current and valid Government Services Administration contract. Any purchase made pursuant to this subdivision shall be under the same terms and conditions as provided in the Government Services Administration contract. Prices paid for such goods and services, other than wireless communication services, whether voice or data, may not exceed the amount provided in the Government Services Administration contract.
- h. *Procurement of items exempt from Alabama state bid requirements.* Where not prohibited by federal laws or regulations, procurement of items exceeding the minimum bid threshold, but otherwise exempt from Alabama state bid requirements shall be subject to the provisions of this Ordinance. Where an item is exempt from bidding pursuant to the Alabama state bid law, proposals from three (3) vendors shall be obtained unless the item is a sole source item or the item.
- (5) *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 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) *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. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g. under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. 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."
- (7) *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. These review requirements shall be governed by 2 CFR § 200.324.
- (8) *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 his 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.
- (9) *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 currently set at one hundred fifty thousand dollars (\$150,000.00), which is the inflation adjusted amount determined by the civilian agency acquisition council and the

defense acquisition regulations council (councils) as authorized by 41 U.S.C. 1908, 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 if he 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.* 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 which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.
- d. *Retention of records.* 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 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.
- (c) *Procurement of contracts subject to 24 CFR § 85.36 requirements.*
- (1) *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 24 CFR § 85.36.
 - 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 City Clerk's Office as required to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 - b. *Standards of conduct.* 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 24 CFR § 85.36, real or apparent, would be involved. Such a conflict would arise when the

employee, officer or agent, or any member of his immediate family, his partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. 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 sub-agreements. To the extent permitted by state (Alabama Code (1975) Title 36, Chapter 25) or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the officers or employees of the city, or agents, or by contractors or their agents.

- 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 should 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 under 2 CFR § 408.220 of the government-wide non-procurement, disbursement and suspension list.
 - e. *Records.* The city will maintain records sufficient to detail the significant 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. Further protest may be handled and resolved pursuant to the same procedure established in Ala. Code § 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.
- (2) *Competition.* All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR § 85.36.
- a. *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.
 - b. *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.

- c. *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. In the event that procedures are not established in the procurement document, written proposals will be rated by a pre-selected panel of qualified city employees, officers and/or agents. The panel will agree upon a rating system prior to review of proposals that will consist of either a numerical grading system or a pass/fail grading system, or a combination of the two (2). 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,
 - 2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
 - d. *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.
- (3) *Methods of procurement.* Any method of procurement under this section shall comply with the requirements of 24 CFR § 85.36 and any other applicable federal, state or local law, rule or regulation, whichever requirement is stricter.
- a. *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services. To the extent the state 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.
 - b. *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 state 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 (2) or more responsible bidders are willing and able to compete effectively and for the business; and
 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.
- c. *Procurement by competitive proposals.* 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. In the event that procedures are not established in the procurement document, written proposals will be rated by a pre-selected panel of qualified city employees. The panel will agree upon a rating system prior to review of proposals that will consist of either a numerical grading system or a pass/fail grading system, or a combination of the two (2);
 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. In its discretion, the city may 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 state competitive bid and/or public works laws establish stricter standards for procurement by competitive proposals, the city shall apply the stricter state law standards.
- d. *Procurement by noncompetitive proposals.* Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (1) source, or after solicitation of a number of sources, competition is determined inadequate. 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 (1) 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; or
 5. The items is exempt from bid under the requirements of the Alabama state bid law.

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.

- e. *Procurement by Purchasing Cooperative.* Where not prohibited by federal or state laws or regulations, procurement may be allowed in accordance with the provisions of Alabama

Code (1975) §§ 41-51-16(a)(16). Prior to obtaining a purchase order, the department seeking the purchase shall obtain documentation from the Alabama Department of Public Examiners verifying that the proposed purchasing cooperative is approved. Additionally, documentation shall be obtained from the purchasing cooperative verifying that the contract was competitively bid in accordance with state and federal law, including, but not limited to, the provisions of 2 CFR § 200.320.

- f. *Procurement through General Services Administration Contract.* Where not prohibited by federal or state laws or regulations, procurement may be allowed in accordance with the provisions of Alabama Code (1975) §§ 41-51-16(a)(17). The purchase of goods or services, other than wireless communication services, whether voice or data, from vendors that have been awarded a current and valid Government Services Administration contract. Any purchase made pursuant to this subdivision shall be under the same terms and conditions as provided in the Government Services Administration contract. Prices paid for such goods and services, other than wireless communication services, whether voice or data, may not exceed the amount provided in the Government Services Administration contract.
 - g. *Procurement of items exempt from Alabama state bid requirements.* Where not prohibited by federal laws or regulations, procurement of items exceeding the minimum bid threshold, but otherwise exempt from Alabama state bid requirements shall be subject to the provisions of this Ordinance. Where an item is exempt from bidding pursuant to the Alabama state bid law, proposals from three (3) vendors shall be obtained unless the item is a sole source item.
- (4) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* 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 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.
- (5) *Contract cost and price.* The city shall perform a cost or price analysis in connection with every procurement action 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. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. 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.
- (6) *Bonding requirements.* 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) percent 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 his 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) percent of the contract price. A "performance bond" is one (1) 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) percent of the contract price. A "payment bond" is one (1) 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 state competitive bid and/or public works laws establish stricter standards for bonding requirements, the city shall apply the stricter state law standards.
- (7) *Contract provisions.* Contracts procured pursuant to this section shall contain the following contract provisions:
- a. *Violation or breach of contract terms.* If the contractor is adjudged as bankrupt, or if he 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.* 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.* 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 which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - d. *Retention of records.* 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. *Compliance, generally.* For contracts in excess of one hundred thousand dollars (\$100,000.00), contractors are required to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
 - f. *Energy efficiency.* Contractors are required to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - g. *Value engineering.* For architectural/engineering (A/E) contracts, contractor is encouraged to develop, prepare, and submit to the city value engineering change proposals (VECP's) voluntarily. Value engineering change proposal (VECP) means a proposal that requires a change to this, the current contract, to implement, and results in reducing the overall projected cost to the city without impairing essential functions or characteristics.
 - h. *Equal employment opportunity.* Contractors shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (Applies to all construction contracts awarded in

excess of ten thousand dollars (\$10,000.00) by grantees and their contractors or subgrantees).

- i. *Anti-kickback.* Contractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (Applies to all contracts and subgrants for construction or repair).
- j. *Davis-Bacon.* Contractors shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Applies to all construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).
- j. *Work hours and safety standards.* Contractors shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Applies to all construction contracts awarded by grantees and subgrantees in excess of two thousand dollars (\$2,000.00), and in excess of two thousand five hundred dollars (\$2,500.00) for other contracts which involve the employment of mechanics or laborers).
- k. *Miscellaneous.* All contracts shall contain provisions giving notice of awarding agency requirements and regulations pertaining to reporting, notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract, and awarding agency requirements and regulations pertaining to copyrights and rights in data.

SECTION 9. Repealer Clause.

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 10. Severability Clause.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 11. Effective Date.

This Ordinance shall become effective upon its adoption or as otherwise required by state law.

ADOPTED and APPROVED this ____ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk