

RESOLUTION NO. 10-07-01-2024

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF
THE CITY OF ASHLAND, ALABAMA, as follows:

1. That the Mayor and City Council does hereby revise the policies to govern purchasing and to establish efficient and economical procurement and selection procedures for obtaining labor, materials and services.
2. That the City of Ashland does hereby adopt a Code of Ethics and the City will maintain a written code of standards to conduct the governing of their employees engaging in the awarding and administration of contracts. No employee, officer or agent of the City shall participate in selection or in the awarding or administration of contract supported by federal funds if a conflict of interest is real or apparent would be involved.

THE EFFECTIVE DATE of this Resolution is October 7th 2024.

SIGNATURES:



Mayor



City Clerk

**POLICIES TO GOVERN PURCHASING AND
ESTABLISH A CODE OF ETHICS FOR
THE CITY OF ASHLAND**

A. PROCUREMENT AND SELECTION PROCEDURES

PURPOSE

To establish efficient and economical procurement and selection procedures for obtaining labor, materials, and services.

Sec. 1 Scope.

All contract labor, materials, supplies and services purchased in whole or in part by the City shall be acquired in accordance with these procedures.

Sec. 2 Applicable Legislation & References.

State of Alabama Competitive Bid Law (Title 41, Code of Alabama, as amended)
State of Alabama Public Works Law (Title 39, Code of Alabama)
State of Alabama Code of Ethics
Common Rule (24 CFR 85.36)

Sec. 3 Selection Procedures.

All labor, materials, and services that are acquired must be clearly documented to evidence that:

- (1) Competitive solicitations of offers contained a clear and accurate description of the materials, product or service to be procured.
- (2) All general and special bidder requirements relating to the materials, product or service were clearly stated in the solicitation.
- (3) The Alabama Small Business Procurement Office and Alabama Office of Minority Business Enterprises is notified in writing within 30 days of each bid opening to encourage the participation of small and minority owned businesses in all City projects.
- (4) Bid awards were made only to responsible contractors that possess the ability to perform successfully under the terms and conditions of the purchase agreement.

Sec. 4 Methods of Procurement.

The City will follow the procurement methods described below and will ensure that all contracts will be in writing, include the appropriate state, federal, and local clauses, and that all contracts will be authorized by the Commission. Further, the City will ensure that the procurement of labor, services, or materials will be conducted in accordance with these local written procedures that conform to 24 CFR 85.36 (Common Rule), Title 41, Code of Alabama (Bid Law) and Title 39 Code of Alabama (Public Works Law). All procurement follows one of the following methods:

(1) Small Purchase

a. See State Bid Law (Title 41, Code of Alabama) Common Rule (24CFR85.36)

(1) Price or rate quotations for purchases or contracts with an aggregate cost of \$30,000 or less must be obtained from at least three (3) qualified sources. (No purchase or contract involving an amount in excess of \$30,000 shall be divided into parts involving amounts of \$30,000 or less for the purpose of avoiding the requirements of the Bid Law.) File documentation is required

b. See Public Works Law (Title 39, Code of Alabama) and Common Rule (24CFR85.36)

(1) Price or rate quotations for professional services with an aggregate cost of \$100,000 or less must be obtained from at least three (3) qualified sources. File documentation and contract for professional services are required.

(2) Contracts for public works involving \$100,000 or less may be let without advertising or sealed bids. Price or rate quotations must be obtained from at least three (3) sources. (No public work involving a sum in excess of \$100,000 shall be split into parts involving sums of \$100,000 or less for the purposes of evading the Public Works Law.) File documentation is required.

(2) Sealed Bids.

a. See State Bid Law (Title 41, Code of Alabama)

(1) All purchases in excess of \$30,000 shall be advertised by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for any length of time as may be determined. Sealed bids shall also be solicited by sending notice by mail or other electronic means to all persons, firms, or corporations who have filed a request in writing that they be listed for solicitation on bids for the particular items that are set forth in the request. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

- (2) All original bids together with all documents pertaining to the award of the contract shall be retained in accordance with a retention period of at least seven years established by the Local Government Records Commission and shall be open to public inspection.

b. See Public Works Law (Title 39, Code of Alabama)

- (1) Definition of Public Works: 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 in the form of lease payments or otherwise.
- (2) Before entering into any contract for a public works involving an amount in excess of \$100,000, the awarding authority shall advertise for sealed bids. If the awarding authority is the state or a county, or an instrumentality thereof, it shall advertise for sealed bids at least once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the improvement or some part thereof, is to be made. If the awarding authority is a municipality, or an instrumentality thereof, it shall advertise for sealed bids at least once in a newspaper of general circulation published in the municipality where the awarding authority is located. If no newspaper is published in the municipality, the awarding authority shall advertise by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for the length of time as may be determined. In addition to bulletin board notice, sealed bids shall also be solicited by sending notice by mail to all persons who have filed a request in writing with the official designated by the awarding authority that they be listed for solicitation on bids for the public works contracts indicated in the request. For all public works contracts involving an estimated amount in excess of \$500,000, awarding authorities shall also advertise for sealed bids at least once in three newspapers of general circulation throughout the state.
- (3) The advertisements shall briefly describe the improvement, state that plans and specifications for the improvement are on file for examination in a designated office of the awarding authority, state the procedure for obtaining plans and specifications, state the time and place in which bids shall be received and opened, and identify whether prequalification is required and where all written prequalification information is available for review. All bids shall be opened publicly at the advertised time and place

(4) Competitive Negotiations

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. See Common Rule (24CFR85.36)
- b. Requests for proposals will be publicized and identify all evaluation factors and their relative importance.
- c. Proposals will be solicited from an adequate number of qualified sources.
- d. Grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees.
- e. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
- f. Grantees 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.

(5) Noncompetitive Negotiations

Procurement by noncompetitive proposals or "sole source" 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: the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the awarding agency authorizes noncompetitive proposals; and after solicitation of a number of sources, competition is determined inadequate.

- a. Proper documentation that one or more of the above circumstances existed.
- b. There is no conflict of interest by the parties involved.
- c. 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. Grantees must 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, grantees must make independent estimates before receiving bids or proposals.

1. 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.
2. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
3. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
4. Grantees 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.
5. 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.
6. 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 (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
7. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Sec. 5 Contracts.

All professional services shall be subject to the requirements of an approved professional services contract and shall be authorized by the Commission. All construction services shall be procured in accordance with the Competitive Bid Law and the use of a Standard Bid Package setting forth applicable State and Federal Rules and Regulations. All construction activities must be contractual and approved by the Commission.

Sec. 6 Responsible Personnel.

The Mayor shall appoint a purchasing coordinator to implement the procurement and selection procedures. The Purchasing Coordinator's duties and responsibilities will consist of:

- (1) The overall coordination of the procurement of labor, materials and services to ensure legal and programmatic compliance.
- (2) Sufficient and clear documentation of all purchase transactions.
- (3) Review of all purchase requests to avoid duplicative and ineligible purchases.
- (4) Review of all purchase requests to avoid division of partial purchases and promote minority enterprise development.
- (5) Determine the most economical approach to the procurement of labor, materials, or services and classify each purchase accordingly.
- (6) As appropriate, the Purchasing Coordinator will assist the Community Development Coordinator in the financial and contractual administration of the program to ensure that payments for goods and/or services are issued only when:
 - (a) The expense is an eligible item and is appropriately budgeted in the approved CDBG budget.
 - (b) Sufficient and detailed source documentation is available.
 - (c) The invoice has been approved for payment as required.
 - (d) Contractors, subcontractors, and vendors have performed according to the terms and conditions of the approved agreement.

For purposes of the procedures set forth above, the Purchasing Coordinator will be the City Clerk. The Mayor may enter into contracts with the City Council's approval.

B. CODE OF ETHICS PURPOSE

The City will maintain a written code of standards of conduct governing the performance of their employees engaged in the awarding and administration of contracts. No employee, officer or agent of the City shall participate in selection or in the awarding or administration of a contract supported by federal funds if a conflict of interest 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. (The City may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.)

To the extent permitted by state (Title 36, Chapter 25, Alabama Code) 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.

Sec. 1 Declaration of Policy.

It is essential to the proper government and administration of the City that the elected officials and employees be, and give the appearance of being, independent and impartial; that public service not be used for private gain; and that there be public confidence in the integrity of the Commission. Because the attainment of one or more of these ends is impaired whenever there exists in fact, or appears to exist, a conflict between the private interest and public responsibilities of the City officials and employees, the public interest requires that the Commission protect against such conflicts of interest by establishing appropriate ethical standards with respect to the conduct of persons herein above named in situations where a conflict may exist.

It is also essential to the efficient operation of the City that those persons best qualified be encouraged to serve in positions of public trust.

Accordingly, the standards hereinafter set forth must be so interpreted and understood as not unreasonable to frustrate or impede the desire or inclination to seek and serve in public office by those persons best qualified to serve. To that end the persons herein above named should not, except as otherwise provided by law, be denied the opportunity available to all other citizens to acquire and maintain private, economic and other interests except where a conflict of interest situation would necessarily result. The policy standards of ethical conduct that shall be applicable to the persons herein above named in the discharge of their official duties; to implement the objective of protecting the integrity of the City and to prescribe only such essential restrictions against conflict of interest as will not impose unnecessary barriers against public service.

Sec. 2 Impartiality.

No official or employee shall by his or her conduct give reasonable basis for the impression that any person improperly can influence him or her or unduly enjoy his or her favor in the performance of official acts or actions or that he or she is affected unduly by the kinship, rank, position of or association with any person.

Sec. 3 Gifts and Favors.

No official or employee shall directly or indirectly request, exact, receive or agree to receive a gift, loan, favor, promise, or thing of value for himself or herself or another person if:

- (1) It tends to influence him or her in the discharge of his or her official duties, or
- (2) He or she recently has been, or is now, or in the near future will be, involved in any official act or action directly affecting the donor or lender.

This section shall not apply in the case of:

- (1) An occasional, non-pecuniary gift of insignificant value less than twenty-five (\$25.00) dollars;
- (2) An award publicly presented in recognition of public service; and
- (3) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Alabama to engage in the making of such a loan.

Sec. 4 Campaign Contributions.

The provisions of this Code shall not apply to campaign contributions made to an official in compliance with the Alabama Campaign and Financial Disclosure Act.

Sec. 5 Confidential Information.

No official or employee shall disclose or otherwise use confidential information acquired by virtue of his or her position with the City for his, her or another person's private gain.

Sec. 6 Representation.

No official or employee shall appear on his or her own behalf, or represent, or appear on behalf of, whether paid or unpaid, any person before any court or before any legislative, administrative, or quasi-judicial board, agency, Commission, or committee appointed by the Elected Officials concerning any contract or transaction which is or may be the subject of an official act or action of the City except in the regular discharge of their official duties, or otherwise use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself, herself, or other persons.

Sec. 7 Incompatible Employment.

No official or employee shall engage in or accept employment with or render services for any private business or professional activity when such is adverse to and incompatible with the proper discharge of this or her official duties.

Sec. 8 Abstention.

An official or employee who has an interest that he or she has reason to believe may be affected by his or her official acts or actions or by the official acts or actions of the City shall abstain from participating in such official act or actions affected thereby.

Sec. 9 Acquiring an Interest.

No official or employee shall acquire an interest in any contract or transaction at a time when he or she believes or has reason to believe that such an interest will be affected directly or indirectly by his or her official act or actions or by the official acts or actions of the Commission.

Sec. 10 Contracts Involving Officials or Employees.

The City of Ashland shall not enter into any contract involving services or property with an official or employee, or with a business in which an official or employee has an interest during their tenure or for one year thereafter. This section shall not apply in the case of:

- (1) The designation of a bank or trust company as a depository for City funds;
- (2) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loan;
- (3) Contracts entered into with a business which employs a Consultant, provided that such employment is not incompatible with the Consultant's official duties under Section 7 of this Code;
- (4) Contracts for services entered into with a business which is the only available source for such goods or services; and
- (5) Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency situation is prepared by the Mayor, submitted to the City at its next regular meeting and approved by the City, and thereafter kept on file.

Sec. 11 Compliance with Applicable Laws.

No official or employee shall engage in any activity or transaction that is prohibited by any law, now existing or hereafter enacted, which is applicable to him or her by virtue of his or her office. When any provision of this Ethics Ordinance shall conflict with the laws of Alabama or the United States, such laws shall apply. If any section shall be declared by any court to be invalid, the remaining sections shall remain applicable.

Sec. 12 Penalties for Violation of Code.

Any violation of a provision of this Code is a misdemeanor. Any person convicted of such violation may be punished by a fine of not more than nine hundred (\$900.00) dollars or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Any officer or employee of the City so convicted of such violation is deprived of his/her office or employment immediately and is ineligible to hold an elected office or employment for two (2) years thereafter.

Sec. 13 Exceptions.

Upon written request by the City to the State, an exception to the provisions regarding an employee, agent, consultant, officer, or elected official or appointed official of the City may be granted by the State. The State may grant such an exception upon written request of the City provided the State shall fully document its determination in compliance with all requirements of paragraph (j)(5), section 570.480, including the State's position with respect to each factor and making such documentation available for view by the public and by HUD.

An exception may be granted after it is determined that such an exception will serve to further the purpose of the Community Development Block Grant Act and the effective and efficient administration for the programs or project.

Sec. 14 Enforcement of the Code.

The Mayor or his designee of the local governing body will be charged with the enforcement of the Code of Ethics. The Mayor or his designee will have the following duties:

- (1) To establish procedures, rules and regulations governing its internal organization and conduct of its affairs;
- (2) To render advisory opinions with respect to the interpretation and application of this Code to all persons who seek advice as to whether a particular course of conduct would constitute a violation of the standards imposed herein. All requests for advice shall be made in writing. Such opinion shall be binding on the governing body in any subsequent complaint concerning the person who sought the opinion and in good faith, unless material facts were omitted or misstated in the request for the advisory opinion;
- (3) To prescribe forms for disclosures required under this Code and to make available to the public the information disclosed as provided under this Code;
- (4) To receive and hear complaints of violations of the standards required by this Code;

- (5) To make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code;
- (6) To hold such hearings and make such inquiries as it deems necessary for it properly to carry out its functions and power;
- (7) To recommend to the local governing body any disciplinary action, including dismissal or censure, deemed appropriate for violations of this Code and to make such recommendations, absent the identity of the person concerned, available to the public;
- (8) To make proposals and recommendations to the local governing body for the adoption of any revisions or amendments to this Code.

Sec. 15 Financial Disclosure.

The Elected Officials, Department Heads, and Employees authorized to commit funds or sign official documents on behalf of the City shall file annually with the State Ethics Commission, a report disclosing the sources of any income, whatever its nature, in excess of \$1,000 derived from any one source for the preceding calendar year. Such report shall be filed on or before April 15 of each year for the prior calendar year. Failure to file such disclosure statement shall be reflected in the records of the local governing body and documented in the first meeting's minutes following the April 15 deadline.

Revised this the 7th day of October 2024.



Mayor
City of Ashland