

AN ORDINANCE TO AMEND CHAPTER 14 OF ORDINANCES FOR THE CITY OF MOBILE,
ALABAMA ENTITLED "CONTRACTS"

Sponsored by: Mayor Stimpson

BE IT ORDAINED by the City Council of the City of Mobile, Alabama as follows:

Section One. Chapter 14 of the Code of Ordinances for the City of Mobile, Alabama, 1991 is hereby amended and restated to read as follows:

"Sec. 14-1 Definitions

Definitions.

- (i) As used in this chapter, the term "contract" means a written agreement for the purchase of goods or services; for the performance of a public work; for the acquisition or disposition of real property of or by the City; or for funding an organization to serve a public purpose. The term does not include: (1) purchases of goods and services exempt from the Competitive Bid Law and conducted pursuant to the City Purchasing Manual of budgeted items, materials, or services for the ordinary needs of the City; (2) purchases bid and awarded by the City purchasing agent or the designated administrative officer pursuant to the competitive bid law where the expenditure has been previously authorized by the Council or the funds for the expenditure have been appropriated by the Council, either specifically or in the annual budget of the City; (3) purchases of, or in connection with utilities, including but not limited to electricity, gas, and telecommunications; (4) purchases of ordinary items of necessity, including but not limited to fuel, medical supplies, uniforms, computers, software license, copiers, equipment repairs, business equipment, insurance, dues, subscriptions and travel expenses; (5) purchases made under annual bids awarded or approved by the Council; (6) deeds, contracts or bonds required in judicial proceedings, as set forth in *Alabama Code* § 11-43-83.
- (ii) The term "contract" is defined as payments made in order to adjust or compromise any litigation, claim, dispute or demand, against the City. Settlements of claims for workers' compensation, employment claims, tax refunds or tax collections, flooding, drainage, zoning violations, and property rights or property damage, in any amount, do not require Council approval. Settlements of claims for personal injury, Section 1983 violations, or other matters where the amount to be paid to or by the City is less than \$50,000, do not require Council approval.
- (iii) The term "contract" does not include the appointment of non-merit employees appointed by the Mayor under § 11-44C-40; the appointment or retention of legal counsel by the Mayor under § 11-44C-38(b); the appointment of employees whose

positions are funded by grants, or are otherwise temporary; or the appointment of employees working in positions not described in the Mobile County Merit System.

- (iv) Upon its adoption, the term "City Purchasing Manual" shall mean the purchasing procedures manual filed with the City Clerk and approved by the City Council pursuant to *Alabama Code* Section 11-44C-69, as hereafter amended by subsequent resolution or ordinance of the City Council. Prior to the adoption of said Manual, the term shall mean the City's purchasing procedures, available on the City website.
- (v) "Public Works": The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, 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, see Ala. Code Section 39-2-1(6), see Alabama Code Section 39-2-1(6).

Sec. 14-2 Contract Procedures

(a) *Execution.* All contracts shall be in writing, serve a public purpose, and be executed in the name of the City by the officers authorized by law.

(b) *Bid Awards and Other Purchases.*

(i) Bids for goods and services, as defined in the Competitive Bid Law, § 41-16-50, *et seq.*, where the amount of the award is greater than \$30,000, and the award is a contract under Section 14-1(i), shall either be awarded by Resolution or awarded when the Council approves a budget amendment or a contract for the goods or services bid. Bids for public works will be approved at the time that the Council approves the contract for the public work.

(c) The City may send and accept electronic signatures on its contracts, agreements, and documents and rely on electronic records and signatures to the fullest extent authorized by the Uniform Electronic Transactions Act., *Ala. Code* Title 8, Chapter 1A.

(d) *Organizations Serving a Public Purpose.* All commitments to fund organizations, regardless of funding source, shall require a performance contract and resolution of the Council finding a public purpose for the expenditure.

Sec. 14-3 Change Orders

The Mayor is authorized to approve change orders to City construction contracts subject to at least one (1) of the following criteria. All change orders shall be filed in the Clerk's office.

- 1) Minor changes for a total monetary value less than required for competitive bidding under the state competitive bid laws.

- 2) Changes for matters relatively minor and incidental to the original contract necessitated by unforeseeable circumstances arising during the course of the work.
- 3) Emergencies arising during the course of the work on the contract.
- 4) Changes or alternates provided for in the original bidding where there is no difference in price on the change order from the original best bid on the alternate.
- 5) Changes of relatively minor items not contemplated when the plans and specifications were prepared and the project was bid which are in the public interest and which do not exceed ten (10) percent of the contract price. This shall mean that the total of all change orders on each contract shall not exceed ten (10) percent of the contract price for each project.

Sec. 14-4 Leases and Licenses of Personal Property

If a lease, license or lease-purchase or similar contract for an item of personal property or service requires funding which will overlap into the subsequent budget year, council approval will be required.

Sec. 14-5 Contracts Requiring Budget Amendments.

All contracts requiring a budget amendment for funding must come before the council in order to appropriate funds.

Sec. 14-6 Contract Implementing Major Programs

Contracts which implement major programs for the City should come before the council. This includes but is not limited to contracts which exceed one-hundred thousand Dollars (\$100,000.00) for construction, consultants, training, professional services, lease purchases, privatized services, licenses and other contracts for services.

Sec. 14-7 Contracts for Routine Purchases and Emergency Procurements

(a) For the purposes of this chapter, contracts shall be deemed for routine purchases if the total amount of the contract is less than thirty thousand dollars (\$30,000.00).

(b) Emergency procurements:

- (i) When an emergency affecting public health, safety or convenience necessitates the purchase of goods or services before the City Council can meet to declare an emergency, the director of finance may make or authorize others to make emergency procurements of commodities or services, when there exists an emergency affecting public health, safety or convenience; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor as approved by the director of finance shall be included in the bid or contract file. As soon as practical, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount of the contract, and a listing of the items procured under the

contract. Such emergency actions and the reason shall be acknowledged by resolution of the City Council as soon as possible.

Sec. 14-8. Nondiscrimination provisions to be included in municipal contracts.

All municipal contracting agencies shall include in every municipal contract hereafter entered into the following provisions:

"During the performance of this contract the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin or disability. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin or disability. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency of the municipality setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualifying applicants will receive consideration for employment without regard to race, creed, color, national origin or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the municipal contracting agency, advising the labor union or worker's representative of the contractor's commitments under this section, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.
4. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further municipal contracts.
5. The contractor will include the provisions of this section in every subcontract or purchase order unless exempted by written orders of the governing body of the City of Mobile so that such provisions will be binding upon each subcontractor or vendor.
6. Each contractor will agree to the above in writing, including the contractor's commitment to follow the Americans with Disabilities Act of 1990.

(Ord. No. 14-034-2018 , § 1, 12-18-18)

Sec. 14-9. Participation by socially and economically disadvantaged contractors.

- (a) As used in this section "socially and economically disadvantaged" shall mean an entity or individual certified as socially and economically disadvantaged in accordance with:
- (1) The findings of a current City of Mobile disparity study; or
 - (2) Certain federal criteria, including, without limitation thereto, any of the following:
 - a. 13 CFR part 124;
 - b. 49 CFR part 26; and
 - c. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

The phrase "current disparity study" excludes any disparity study performed prior to July 1, 2020.

- (b) All contracts or agreements entered into by the city or any entity thereof for any service of any kind, whether by bid or otherwise, including but not limited to professional services and bond issues, shall require that the contractor, firm or company to which any such contract is awarded have, or provide written proof demonstrating good faith efforts to procure, at least fifteen (15) percent participation by socially or economically disadvantaged contractors or professionals, and the city shall make every reasonable effort to ensure that at least fifteen (15) percent of the total value of all such contracts or agreements described above shall be awarded to qualified contractors or professionals who are socially and economically disadvantaged. Unless waived or exempted, all bidders must demonstrate good faith efforts to meet the requirements of this section 14-10 in order to be considered responsive bidders.
- (c) The mayor is authorized to establish an office to administer the provisions of this section, including but not limited to: adopting written procedures, informal guidelines, and developing forms as may be necessary to effectuate this section; establishing certification rules and procedures; recommending related procurement goals and contract requirements; implementing a procedure for establishing individual participation goals for each contract subject to this section; and recruiting socially and economically disadvantaged contractors to create adequate capacity for services of any kind.
- (d) This section shall not apply to contracts if:
 - (1) After procurement, but prior to executing a contract, it is found that there are one or fewer socially or economically disadvantaged individuals or entities available for services being contracted; or
 - (2) Funded by sources that do not allow for such preferences; or
 - (3) Emergency contracts as approved by the council.

Section Two. All City Code sections and ordinances or parts of the City Code sections and ordinances in conflict are hereby repealed.

Section Three. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

Section Four. This amendment shall be effective following adoption and publication.

Adopted:

City Clerk