



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 12/19/2024

File ID: TMP-4951

Department: Finance

Subject:

Type of Action: Approval/Action

Introduction of an Ordinance amending Article IV, Division 2, Procurement of Chapter 2, Administration, of the Code of Ordinances, City of Huntsville to increase FTA procurement thresholds and amend mandatory procurement standards.

Ordinance No.

Finance Information:

Account Number: N/A

City Cost Amount: \$ N/A

Total Cost: \$ N/A

Special Circumstances:

Grant Funded: \$ N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

Adds verbiage to amend the mandatory procurement standards to address the acquisition of unnecessary and duplicate items. Amends sections that were not addressed by Ordinance 24-316 increasing small dollar threshold from \$2,000 to \$10,000 and increases FTA small dollar threshold from \$150,000 to \$250,000.

ORDINANCE NO. 24--____

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, that Article IV, Division 2, Procurement, of Chapter 2, Administration, of the Code of Ordinances, City of Huntsville, is hereby amended to read as follows:

Section 1. Section 2-188(b)(5) is amended to add subsection (f) to read as follows:

(f) *Unnecessary or duplicative items.* The city's procurement procedures shall avoid the acquisition of unnecessary or duplicative items.

Section 2. Section 2-188(b)(22) Purchases with Federal Transit Administration Funds are amended to read as follows:

(22) Micro-purchase Davis-Bacon. The City of Huntsville, Alabama adheres to the Davis-Bacon Act for prevailing wage and hour restrictions that applies to construction contracts over \$2,000.00.

Section 3. Sections 2-188(b)(53), (54), and (55) (56) are amended to read as follows:

(53) *Bid security (construction over \$250,000.00).* Bid bonds, performance bonds, labor and material bonds or other security may be requested for supply contracts or service contracts as procurement services deems advisable to protect the city's interests, and in conformance with the Code of Ala. 1975, tits. 39 and 41 (Code of Ala. 1975, §§ 39-1-1 et seq., 41-1-1 et seq.). Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to five percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

(54) *Performance security (construction over \$250,000.00).* Bid bonds, performance bonds, and labor and material bonds or other security may be requested for supply contracts or service contracts as procurement services deems advisable to protect the city's interests, and in conformance with the Code of Ala. 1975, tits. 39 and 41 (Code of Ala. 1975, §§ 39-1-1 et seq., 41-1-1 et seq.). Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

Both FTA and the Common Grant Rules generally require the third-party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third-party contract.

(55) *Payment security (construction over \$250,000.00).* The City of Huntsville, Alabama will comply with the Common Grant Rules requiring the third-party contractor to obtain

a standard payment bond for 100 percent of the contract price. The "payment bond" will be obtained to ensure that the contractor will pay all people supplying labor and material for the third-party contract as required by law. The following minimum bonding policy amounts will be utilized:

- a. Less than \$1,000,000.00. Fifty percent of the contract price if the contract price is not more than \$1,000,000.00.
- b. More than \$1,000,000.00 but less than \$5,000,000.00. Forty percent of the contract price if the contract price is more than \$1,000,000.00 but not more than \$5,000,000.00; or
- c. More than \$5,000,000.00. Two and one half million dollars if the contract price is more than \$5,000,000.00.

(56) *Federal clause.* The City of Huntsville, Alabama will ensure that all applicable FTA clauses and certifications are included in any procurement actions that may utilize FTA funds exceeding the micro-purchase limit of \$10,000.00. To ensure that all FTA clauses and certifications are included in the FTA funded procurement, the Procurement Division uses a solicitation preparation checklist similar to the form under subsection (c). If it is determined that FTA compliance is required, Public Transit will use FTA C220.1F, as amended, "Provisions, Certifications, Reports, Forms, and Other Matrices of Third-Party Provisions," subsection (c) of this ordinance.

Section 5. Section 2-188 (c). Forms, templates, matrices and checklist is amended to update and update the following:

1) Procurement Decision Matrix			
Method of Procurement			
Micro-Purchase		Small Purchase	
	Amount < \$10,000 (City Threshold)		Amount < \$30,000 (City Threshold)
	Amount < \$10,000 (FTA Threshold)		Amount < \$250,000 (FTA Threshold)
	Multiple Sources		Complete & adequate specifics or description
			Three or more quotes available
		FTA Simplified Acquisition	
			Amount < \$250,000 (FTA Threshold)
			Complete & Adequate Specifics or Description
			Three or More Quotes Available
Sealed Bids (IFBs)		Type of Contract	
	Amount < \$30,000 (City Threshold)		Fixed Price
	Complete & adequate specifics or description		Firm Fixed Price Unit Prices
	Two or more responsible bidders willing to compete		Cost plus Fixed Fee
	Selection can be made on basis of price alone		Time & Materials (Justified)
	Firm Fixed Price Contract		Blanket Purchase Order
	No discussion with bidders required after receipt of bids		Indefinite Delivery/Indefinite Quantity (IDIQ)
Competitive Proposals (RFPs)		Sole Source/Exemption from Competition	
	Complete specifications not feasible		Approved by FTA
	Bidder input needed		OEM, Custom item OR
	Two or more responsible bidders willing to compete		Only one source OR Competition inadequate after solicitation OR
	Discussion needed with bidders after proposals		Emergency/Public Exigency
	Fixed price can be set after discussion OR		

8) Sole Source Justification Form

EXEMPT FROM COMPETITIVE BID/QUOTE REQUIREMENT REQUEST FORM *(Revised December 2024)*

The Code of Alabama 1975, as amended and the City of Huntsville Purchasing Policy provides provisions where purchases and contracts that typically require compliance with competitive bidding requirements or the securing of three (3) quotes to exempt from the mandated requirements. Circumstances of this nature arise, must be justified, documented, and memorialized in writing to firmly establish that a claim for exemption is in accordance with established laws/policy.

Date: _____ Requestor Name: _____ Department: _____

Vendor: _____ Estimated Amount: _____

Commodity/Service: _____

Request Type (Check one):

- ☐ **General Purchases & Contracts:** Labor, services, equipment, materials, supplies, etc. totaling \$30,000 or more (§41-16-50 of the Code of Alabama 1975, as amended).
- ☐ **Public Works Contracts:** Construction, installation, repair, renovation, maintenance of public buildings, structures, sewers, waterworks, roads, et seq as well as any other improvement to be constructed, installed, etc. on public property and to be paid in whole or in part with public funds...totaling \$100,000 or more (§39-2-2 of the Code of Alabama 1975, as amended).
- ☐ **Non-Contract Purchase & Contracts (3 Quotes):** §41 Commodities & Services: \$10,000 - \$29,999 OR §39 Public Works: \$50,000 - \$99,999 (Ch.2 Art. IV Div. 2 §2-184(d)(2) of the City of Huntsville Procurement Policy).

I. Select the circumstance(s) that describes this purchase and warrants the exemption from competitive bidding requirements or the obtaining of three (3) quotes. *Complete Sections II – IV to provide justification/explanation and documentation to support request for exemption.*

- ☐ **Sole Source/Impossible to Compete** - Products & services by nature that are impossible to award by competitive bidding. Product/Service must be unique and of indispensable nature. No other product/service or vendor substantially/equivalently addresses the specifications/objectives/intended purpose. There is no other viable alternative (§41-16-51(a)(13)) and §39-2-2(f)(1)-(3)). *Must provide a vendor/manufacture letter to support exemptions under §41. Must provide architectural or engineer of record recommendation in writing for sole source specifications for public works projects to support exemptions under §39.*
- ☐ **Professional Services** – Services provided by individuals (i.e. attorney, architect, engineer, consultant, accountant, etc.) possessing a high degree of professional skill/knowledge where their role plays a decisive part in the project (§41-16-51(a)(3)); or professional services only consisting of architectural, engineering, construction management, program or project management in support of public works, (§39-2-2(d)(1)). *City Council action may be required.*
- ☐ **Security or Safety** – Products & services related to or having impact upon security plans, procedures, systems or security/safety of persons, structures, facilities/infrastructure (§41-16-51(a)(15)) or public works per §39-2-2(g). *Must provide a vendor/manufacture letter to support.*
- ☐ **Emergency Purchase** – Case of emergency in which a delay in remedying would cause immediate harm to a person or public property (§39-2-2(e)(1)) OR Case of emergency affecting public health, safety, or convenience (§39-2-2(e)(2)), *Both requires reason for action to be made public and published in writing OR circumstances that arise for which delay is likely to cause harm to an individual or public property. (§41-16-53). Requires two (2) or more quotes. Requires adoption of a resolution by City Council.*

☐ **WPC Provision** – Purchase of equipment, supplies, materials used & consumed in normal & routine operations (§41-16-51(b)(7)).

☐ **State/Cooperative Agreement/GSA** – Products & Services that have been subjected to competitive bid by the State of Alabama, approved by AL Department of Examiners of Public Accountants, or made available through the Government Services Administration (§41-16-51(a)(16),(17), and (18))

Contract Source: _____ Contract No. _____

Contract Name: _____

☐ **Other** – Provide specific details by completing applicable sections below.

II. Will the materials or equipment purchased be used in a public works project? ☐ Yes ☐ No. Additional action shall be required pursuant to §39-2-2(l)(1) and Public Works Law as outlined in §39-2-2.

III. Provide a detailed explanation/statement describing the circumstance(s) creating the need to exempt the purchase or contract from the competitive bidding process or three (3) quote requirement. *Attach additional page(s) if necessary.*

IV. Respond to the following questions for Sole Source/Impossible to Compete and Security or Safety. *Attach additional page(s) if necessary.*

1. What specific need or specification does this product and/or service address?

2. What other products and/or services were considered/explored to address the need or specification?

3. What other vendors were considered/explored to provide the product and/or service? Why were those vendors not selected?

4. Is the product and/or service an integral repair or replacement part to existing equipment and/or infrastructure? If yes, provide type/name/manufacturer of equipment.

OPTIONAL

Date

Department Head

OPTIONAL

Date

City Attorney/Deputy Attorney

OPTIONAL

Date

Procurement Manager

Date

Submit form and supporting documentation to
procurement@huntsvilleal.gov

Section 6. Section 2-188 (c)(9). Forms, templates, matrices and checklist is amended to update and update the following:

f. FTA Contract Clause Matrix

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Equal Employment Opportunity except Special DOL EEO clause for construction projects)	All	All	All	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs
Prompt Payment	All	All	All	All	All

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		>\$250,000 (transportation services excepted).	>\$250,000	>\$250,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with major changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron, manufactured products and construction materials exceeding \$150,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards - Preaward and Post Delivery Reviews	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

D. OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		2 CFR § 200.318(b)
Record of Procurement History		2 CFR § 200.318(i)
Protest Procedures		2 CFR § 200.318(k)
Selection Procedures		2 CFR § 200.320 b.
Cost/Price Analysis		2 CFR § 200.324
Justification for Noncompetitive Awards	If Applicable.	2 CFR § 200.320 c.
No Excessive Bonding Requirements		2 CFR § 200.319(b) (2)
No Exclusionary Specifications		2 CFR § 200.319(d) (1)
No Geographic Preferences	Except for A&E Services	42 CFR § 200.319 c.

Section 5. With the exception of the amendments made herein, all other portions of Chapter 2, Article IV of the Code of Ordinances, City of Huntsville, Alabama shall remain unchanged and in full force and effect.

Section 6. This ordinance shall become effective upon its adoption and approval.

ADOPTED this the 19th day of December, 2024.

President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 19th day of December, 2024.

Mayor of the City of
Huntsville, Alabama