

ORDINANCE NO. 2024-05

AN ORDINANCE OF THE CITY OF FLAGLER BEACH, FLORIDA, AMENDING CHAPTER 2, ARTICLE IX OF THE CITY OF FLAGLER BEACH CODE OF ORDINANCES RELATING TO PURCHASING AND PROCUREMENT; ADDRESSING SUGGESTIONS MADE BY THE FLORIDA DEPARTMENT OF EMERGENCY MANAGEMENT; ADDING PROVISIONS RELATED TO PROCUREMENTS REGULATED BY 2 CFR, PART 200; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, CONFLICTS, AND EFFECTIVE DATE.

WHEREAS, the City has adopted by ordinance procurement and purchasing policies; and

WHEREAS, the City has received comments and suggestions from the Florida Department of Emergency Management (FDEM) related to procurements for projects using federal grant dollars; and

WHEREAS, the City Commission finds it advisable to address the comments and suggestions made by FDEM by incorporating into its procurement and purchasing policies applicable provisions of the Code of Federal Regulations.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA, AS FOLLOWS:

SECTION ONE. The findings set forth in the recitals above are hereby adopted as legislative findings of the City Commission pertaining to this Ordinance.

SECTION TWO. Chapter 2, Article IX, “PURCHASING CODE,” of the City of Flagler Beach Code of Ordinances is hereby amended as follows (note, underlined text notates additions, strikethrough text notates deletions, and ellipses (***) notate text which remains unchanged and is not reprinted here):

ARTICLE IX. PURCHASING CODE
DIVISION 1. GENERALLY

Sec. 2-290. Policies and procedures.

The goal of this manual is to promote efficient and economical purchasing of commodities, goods and services for the city. The attainment of this goal is an essential element in establishing credibility and accountability for every employee of the city. However, these policies are not to be construed as placing any restriction or limitation on purchases made by direct action of the city commission in accordance with the Florida State Statutes.

Sec. 2-291. Purpose.

The purpose of this article is as follows:

- (1) To purchase in the open market, obtaining the maximum value for the money.

-
- (2) Eliminate unauthorized purchases and assist in budgetary control.
 - (3) Provide assistance in the check and balance system of receipt of merchandise and expenditures for same.
 - (4) Avoid any unethical business practices or any appearance thereof.
 - (5) Increase the effectiveness of each purchase within the city by providing specific guidelines for all departments.
 - (6) Serve as a continual reminder of the duties and responsibilities that each employee has in maintaining the city's reputation for fairness and integrity.
 - (7) To encourage uniform bidding and to endeavor to obtain full and open competition on all purchases.
 - (8) No employee of the city shall receive compensation from any entity doing business with the city, in accordance with F.S. Ch. 112.
 - (9) Any attempt by any employee to subdivide a contract or purchase to avoid the threshold amounts in this policy shall be subject to disciplinary action up to and including termination.

"Professional services" (architecture, engineering, surveying, and accounting) are hereby exempted from the purchasing policies of the city but may be subject to state statutory procurement requirements established by the Consultants' Competitive Negotiations Act ("CCNA"). The city manager shall maintain a list of professional service firms approved by the city commission. This list may be changed at any time by action of the city commission.

* * *

DIVISION 3. COMPETITIVE BIDDING

Sec. 2-311. Invitation to bid and/or request for proposals.

For the purposes of this section the word bid and proposal will be considered the same.

- (1) All bids must be advertised a minimum of one (1) time in a newspaper of general circulation at least fourteen (14) days prior to the bid opening unless the department head can document that all potential bidders have been given a copy of the bid package.
- (2) The advertisement shall include a brief description of the goods and/or services desired, where a copy of the bid package may be obtained, and the time and place for the bid opening.
- (3) The bid package shall contain the time and place for the bid opening, general conditions required of all vendors, some background on the project, a bid bond, a performance bond for all contracts where the bid may be in excess of fifty thousand dollars (\$50,000.00), and the specifications for the product and/or services desired.
- (4) The use of brand names in a bid is permitted, but only for the purposes of establishing a standard. Brand names shall not be used as a way of limiting or restricting competition.

-
- (5) Any time constraints on a project must be identified within the bid package. Inability to meet the time constraints may be sufficient reason for a bid to be rejected.
 - (6) All bids received after the time designated shall be returned unopened.
 - (7) Prebid conferences may be held if needed. Attendance at a prebid conference can be but does not have to be mandatory. Notice of a prebid conference must be included in the newspaper advertisement and the bid package.
 - (8) Every bid package shall contain a hold harmless provision whereby the contractor, to the fullest extent permitted by law, shall at all times indemnify, defend and hold the city harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which the city may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever and damage to or loss of or destruction of any property whatsoever, arising from, or in any way connected with the construction project.
 - (9) Prior to any work beginning the contractor must provide to the city a certificate of insurance for commercial liability insurance naming the city as an additionally insured in an amount not less than five hundred thousand dollars (\$500,000.00), auto liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00), and workers compensation insurance as required by the State of Florida. The amounts of the insurance can be adjusted depending on the job.
 - (10) Bid proposals must be opened at the time and place stated in the bid package. There must be at least one (1) witness to the opening in addition to the person opening the bid.
 - (11) The purpose of the bid opening is only to record the vendors and the bid amounts. No analysis of the bids will be performed at the bid opening.
 - (12) All bids shall be available for public inspection immediately after the bid opening.
 - (13) All information within a bid shall be considered public information unless the information has been clearly marked as proprietary. No proprietary information shall be released without the written consent of the bidder except under a court order.
 - (14) The city shall always have the right to waive irregularities, reject any and all proposals, request the item be rebid, or to negotiate separately with vendors.
 - (15) All vendors responding to the bid package shall be notified of the results of the bid prior to city commission approval.
 - (16) Except as otherwise provided by applicable state or federal law or regulation, All bid awards shall be to the bidder who has the lowest cost; and is the most responsive and responsible, and which is in the best interest of the city.
 - (17) The memo containing the recommended vendor shall contain the date the bid was advertised, the number of vendors receiving a bid package, a list of those vendors responding, and a recommendation to the city commission as to the most responsive and responsible bidder. This does not have to be the lowest bidder. However, if the lowest bidder is not chosen an explanation must be included.

-
- (18) For each contractual services contract, the city shall designate an employee to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor

Sec. 2-312. Bid challenge.

Any bid may be challenged on the grounds of irregularities in the bid procedure or the evaluation process. Notice of intent to challenge must be made to the city clerk within seventy-two (72) hours after receipt of the intended recommendation of award. A formal written challenge must be filed within five (5) working days of the date the notice of intent was provided. Failure to file in a timely manner will constitute a waiver of the proceedings.

Notice of protest shall contain the name of the bidder, the bidder's address and phone number, the solicitation involved, and a brief summary of the basis of the protest.

The formal written protest shall identify the solicitation involved, a clear statement of the grounds on which the protest is based and specifically state the relief the vendor believes himself to be entitled. The challenger must mail a copy of the notice of protest to the vendor receiving city staff's recommendation.

The city manager shall investigate the challenge within ten (10) working days of the formal written protest. In the event the challenge is not resolved, the city commission shall be presented the written challenge and the administrator's decision on the challenge prior to the award of the bid.

Sec. 2-313. Local preference.

- (a) *Definition of local business.* "Local business" as used herein shall mean a business that meets the following criteria:

- (1) Has a verifiable fixed office or distribution point and has had, for at least one (1) year prior to bid or proposal opening date, a street address, which shall not be interpreted to mean a post office box, in the City of Flagler Beach or a political jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
- (2) Possesses all business licenses required by law;
- (3) Has paid, for at least one (1) year prior to bid or proposal opening date, its local business tax to the City of Flagler Beach or a jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
- (4) Has a staff comprised of employees and not independent contractors or borrowed or leased employees;
- (5) Is not a joint venture or partnership unless all members or partners of the joint venture or partnership meet the criteria of (1) through (4) above; and
- (6) Is the principal offeror on the subject proposal.

- (b) *Submittal of verification of local business status.* A local business desiring to receive the local business preference shall submit all information necessary to verify its status as a local

business upon submitting any bid, response to request for qualifications, letter of interest, or other proposal to the city.

(c) *Local preference in purchasing and contracting.*

- (1) In bidding for, or letting contracts for procurement of, supplies, materials, equipment and services as described in the purchasing policies of the city, the city commission, or other authorized purchasing authority, may give a preference to local businesses in making purchases or awarding contracts in an amount not to exceed:
 - a. Five (5) percent of the local business' total bid price for procurement activities in amounts less than five hundred thousand dollars (\$500,000.00); or
 - b. Three (3) percent of the local business' total bid price for procurement activities in amounts over five hundred thousand dollars (\$500,000.00);
- (2) The total bid price shall include not only the base bid price, but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the city commission or other appropriate authority.
- (3) In the case of requests for proposals or qualification, letters of interest, or other solicitations and competitive negotiations and selections in which objective factors are used to evaluate the responses, local businesses shall be assigned five (5) percent of the total points of the total evaluation points.

(d) *Exceptions to local preference policy.*

- (1) The procurement preference set forth in this section shall not apply to any of the following purchases or contracts:
 - a. Goods or services provided under a cooperative purchasing agreement or interlocal agreement;
 - b. Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference, including purchases or contracts subject to 2 CFR, Part 200;
 - c. Purchases made or contracts let under emergency or noncompetitive situations, for litigation related legal services, or sole source provider contracts;
 - d. Any contracts governed by the Consultants' Competitive Negotiations Act; or
 - e. Purchases with an estimated cost of five thousand dollars (\$5,000.00) or less.
- (2) Application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written justification and recommendation by the city manager and approval of the city commission.
- (3) The preference established in this section does not prohibit the right of the city commission or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare

-
- qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals.
- (4) The bid preference established in this ordinance does not prohibit the city commission, or other authorized purchasing authority, from giving any other preference permitted by law in addition to the preference authorized in this section.
- (e) *Reciprocity.* For purposes of this section, reciprocity shall be extended to any business located within the jurisdictional boundaries of any political jurisdiction of Flagler County, Volusia County, Putnam County or St. Johns County and such business shall be given the same preference as given to local businesses in the City of Flagler Beach if:
- (1) Such business meets the criteria set forth in subsections (a)(1)—(6) above as to the subject political jurisdiction; and
- (2) The subject political jurisdiction extends to businesses located in the City of Flagler Beach the same preference it extends to businesses located within its own jurisdictional boundaries.
- (f) *Application and enforcement of preference policy.*
- (1) The local preference policy established in this section shall apply to new contracts and procurements solicited after the effective date of this section.
- (2) This section shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.
- (g) *Promulgation of rules.*
- (1) The city manager is hereby authorized to adopt administrative rules supplemental to the provisions of this section as deemed necessary and appropriate to implement the provisions of this section.
- (2) The provisions of this section and the rules adopted by the city manager shall be provided to potential bidders, vendors and contractors to the widest extent practicable.
-

1 * * *

2 DIVISION 5. PROCUREMENT SUBJECT TO 2 CFR, PART 200

3 When a purchase or procurement is subject to 2 CFR Part 200, the following
4 provisions shall apply. In the event of any conflict between this division and any other part
5 of this chapter, this division shall control.

6 (1) The city shall use documented procurement procedures that are consistent with state
7 and local laws and regulations and the standards of this division, for the acquisition
8 of property or services required under a federal award or subaward. The city's
9 documented procurement procedures shall conform to the procurement standards
10 identified in 2 CFR 317 through 327.

11 (2) The city shall maintain oversight to ensure that contractors perform in accordance
12 with the terms, conditions, and specifications of their contracts or purchase orders.

13 (3) Conflicts of interest.

14 (a) No employee, officer, or agent may participate in the selection, award, or
15 administration of a contract supported by a federal award if he or she has a real or
16 apparent conflict of interest. Such a conflict of interest would arise when the
17 employee, officer, or agent, or any member of his or her immediate family, his or
18 her partner, or an organization which employs or is about to employ any of the
19 parties indicated herein, has a financial or other interest in or a tangible personal
20 benefit from a firm considered for a contract.

21 (b) Officers, employees, and agents of the city may neither solicit nor accept
22 gratuities, favors, or anything of monetary value from contractors or parties to
23 subcontracts. Violations of this prohibition shall be subject to discipline and
24 sanctions in accordance with Section 2-396, herein.

25 (4) Efficiency review.

26 (a) The city's procurement procedures shall avoid acquisition of unnecessary or
27 duplicative items. Consideration shall be given to consolidating or breaking out
28 procurements to obtain a more economical purchase. Where appropriate, an
29 analysis will be made of lease versus purchase alternatives, and any other
30 appropriate analysis to determine the most economical approach.

31 (b) The city shall consider using value engineering clauses in contracts for
32 construction projects of sufficient size to offer reasonable opportunities for cost
33 reductions. "Value engineering" is a systematic and creative analysis of each
34 contract item or task to ensure that its essential function is provided at the overall
35 lower cost.

36 (5) Awards; contract administration.

37 (a) The city shall award contracts only to responsible contractors possessing the
38 ability to perform successfully under the terms and conditions of a proposed
39 procurement. Consideration will be given to factors including contractor integrity,

40 compliance with public policy, record of past performance, and financial and
41 technical resources.

42 (b) The city shall maintain records sufficient to detail the history of the
43 procurement. These records include but are not limited to: the rationale for the
44 method of procurement, selection of contract type, contractor selection or rejection,
45 and the basis for the contract price.

46 (c) The city shall not use time-and-materials type contracts.

47 (d) The city shall be solely responsible, in accordance with good administrative
48 practices and sound business judgment, for the settlement of all contractual and
49 administrative issues arising out of procurements. Violations of law will be referred
50 to the local, state, or federal authority having proper jurisdiction.

51 (6) Competition.

52 (a) All procurement transactions for the acquisition of property or services required
53 under a federal award shall be conducted in a manner providing full and open
54 competition consistent with the standards of this division, state laws and
55 regulations, and 2 CFR 319 and 2 CFR 320.

56 (b) In order to ensure objective contractor performance and eliminate unfair
57 competitive advantage, contractors that develop or draft specifications,
58 requirements, statements of work, or invitations for bids or requests for proposals
59 shall be excluded from competing for such procurements.

60 (c) Situations considered to be restrictive of competition include but are not limited
61 to:

62 (i) Placing unreasonable requirements on firms in order for them to qualify to
63 do business;

64 (ii) Requiring unnecessary experience and excessive bonding;

65 (iii) Noncompetitive pricing practices between firms or between affiliated
66 companies;

67 (iv) Noncompetitive contracts to consultants that are on retainer contracts;

68 (v) Organizational conflicts of interest;

69 (vi) Specifying only a "brand name" product instead of allowing "an equal"
70 product to be offered and describing the performance or other relevant
71 requirements of the procurement; and

72 (vii) Any arbitrary action in the procurement process.

73 (d) The city shall conduct procurements in a manner that prohibits the use of
74 statutorily or administratively imposed state or local geographical preferences in
75 the evaluation of bids or proposals, except in those cases where applicable federal
76 statutes expressly mandate or encourage geographic preference. Nothing in this
77 paragraph preempts state licensing laws. When contracting for architectural and
78 engineering services, geographic location may be a selection criterion, provided its

application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(e) All solicitations shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not 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, must 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 equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

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

(f) The city shall 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.

(g) The city shall not preclude potential bidders from qualifying during the solicitation period.

(h) Noncompetitive procurements may only be awarded in accordance with 2 CFR 320(c).

(7) Methods of procurement to be followed.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a federal award does not exceed the “*simplified acquisition threshold*” (SAT), as defined in 2 CFR 200.1, formal procurement methods are not required. The city may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(i) *Micro-purchases.*

(1) *Distribution.* The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold set forth in 2 CFR 200.1. To the maximum extent practicable, the city shall distribute micro-purchases equitably among qualified suppliers.

(2) *Awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the city considers the price to be reasonable based on research, experience, purchase history, or other information, and documents it files ^[HN1] accordingly.

(3) *Thresholds.* The city is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the city must not be prohibited under state or local laws or regulations.

(ii) *Small purchases.*

(1) *Small purchase procedures.* Small purchase procedures may be used for the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but which does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the city.

(2) *Simplified acquisition thresholds.* The city is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the Federal Acquisition Regulations. A lower simplified acquisition threshold used by the city must be not be prohibited under state or local laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a federal financial assistance award exceeds the SAT, or a lower threshold established by the city, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with 2 CFR 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the SAT:

(i) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) 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.

(2) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) 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 must 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; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(ii) *Proposals.* A procurement method in which either a fixed-price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified sources. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) The city shall include in the request for proposal a written method for conducting technical evaluations of the proposals received;

(3) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the city, with price and other factors considered; and

(4) 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 through A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* Noncompetitive procurement may be used only when one or more of the following circumstances apply:

(i) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;

(ii) The item is available only from a single source;

(iii) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(iv) The federal awarding agency or pass-through entity has expressly authorized in writing a noncompetitive procurement in response to a written request from the city; or

(v) After solicitation of a number of sources, competition is determined inadequate.

(8) Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The city shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps shall include:

(i) Placing qualified small and minority businesses, and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(i) through (v) of this subparagraph.

(9) Domestic preferences for procurements.

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

(b) For purposes of this paragraph 9:

(i) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(ii) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(10) Procurement of recovered materials.

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

(11) Contract cost and price.

(a) The city shall perform a cost or price analysis in connection with every procurement action in excess of the SAT, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, as a starting point, the city shall make independent estimates before receiving bids or proposals.

(b) The city shall 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 must 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.

(c) The city shall not allow costs or prices based on estimated costs for contracts under the federal award.

(d) The city shall not use the cost plus a percentage of cost or percentage of construction cost methods of contracting.

(12) Federal awarding agency or pass-through entity review.

(a) The city shall 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.

(b) The city shall make available, upon request of the federal awarding agency or pass-through entity, pre-procurement documents, such as requests for proposals, invitations for bids, or independent cost estimates, for review when:

(i) The city's procurement procedures or operation fails to comply with relevant procurement standards;

(ii) The procurement is expected to exceed the SAT, and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(iii) The procurement, which is expected to exceed the SAT, specifies a "brand name" product;

(iv) The proposed contract is more than the SAT and is to be awarded to a firm other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the SAT.

(c) The city is exempt from the pre-procurement review in paragraph (b) above if the federal awarding agency or pass-through entity determines that its procurement systems comply with all relevant standards.

(i) The city may request that its procurement system be reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified;

(ii) The city may self-certify its procurement system. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding agency may rely on written assurances from the city that it is complying with these standards. The city must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

(13) Bonding requirements. Unless the federal awarding agency or pass-through entity has accepted other bonding policies and requirements, the following requirements shall apply:

(a) A bid guarantee from each bidder equivalent to five percent of the 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 as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent 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.

(14) Contract provisions. The city's contracts must contain the applicable provisions contained in Appendix II to 2 CFR Part 200.

SECTION THREE. Codification. It is the intent of the City Commission of the City of Flagler Beach that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

SECTION FOUR. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with the provisions of any other ordinance of this City, the conflicting provisions of the previous ordinance shall be repealed and superseded by this Ordinance.

SECTION FIVE. Effective date. This Ordinance shall take effect immediately upon adoption as provided by the Charter of the City of Flagler Beach.

PASSED ON FIRST READING THIS _____ DAY OF MARCH, 2024.

PASSED AND ADOPTED THIS X DAY OF APRIL, 2024.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION

Patti King, Mayor

ATTEST:

Penny Overstreet, City Clerk