



PURCHASING POLICY AND PROCEDURES

City of Foley, Alabama

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Resolution

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RESOLUTION AMENDING THE PURCHASING POLICY AND PROCEDURES

Purchasing Policy and Procedures

PREFACE

Purchasing involves the purchase, lease, and/or rent of property and services. Property has a broad definition and can range from paper clips to computer equipment. Services can include maintenance and consultation. Every municipality must purchase, lease, or rent. It is important for the employees of the City of Foley to be good stewards of our citizen's tax dollars. Adoption and observation of a proper purchasing procedure can help the municipality save money and purchase better quality goods and services.

Budgeting, accounting, and purchasing need to be closely coordinated, which ultimately strengthens financial control. The key players in the purchasing process include the municipal governing body and the department heads.

CHAPTER 1 – INTRODUCTION

These procedures contain the current policy, procedures, and guidelines to be followed for all future purchases by the City.

- 1) The purpose of these procedures is to document and establish a uniform, orderly, and proper method of buying goods and services for the City. These policies, procedures, and guidelines will apply to all City employees, City officers, and agents when buying any goods or services for the City.
- 2) In an event of a conflict between the policies and procedures contained herein and state or federal law, the state or federal law shall control. In the event of any conflict between the policies and procedures contained herein and any previous policies, practices or procedures of the City, the provisions contained herein shall control.
- 3) These procedures are adopted by resolution of the City Council and any changes may be made by resolution only. This does not apply to the department level procedures that may be developed to augment this policy.

CHAPTER 2 - PROHIBITED ACTS

SECTION 2.1 – CONFLICTS OF INTEREST

- 1) No Council member, Mayor, officer, or employee of the City shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the treasury. (*Code of Alabama, §11-43-12*) Single, transactional purchases from businesses owned or operated by City of Foley public officials, employees, or spouses, parents and children of employees are permitted in the event that these transactions are not done by, or at the direction of, the public official or employee and are not on-going or long-term purchases.
- 2) No officer or employee may submit or approve a Purchase Order Request in which he or she shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the

purchase of or contract for any personal property or contractual service, nor in any firm, partnership, association, or corporation furnishing any such personal property or contractual services to the City. (*Code of Alabama, §41-16-30*)

- 3) No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. (*Code of Federal Regulations § 200.318*)
- 4) Questions about potential conflicts of interest should be resolved prior to purchasing the good or service and prior to submitting a Purchase Order Request. ***Violations may constitute a crime under state law and subject the violator to civil and/or criminal penalties.***

SECTION 2.2 – GIFTS FROM VENDORS

The officers, employees, and agents of the City may neither solicit nor accept gratuities, favors, or anything of monetary value, directly or indirectly, from any person, firm, association, corporation, contractor or parties to subcontracts to whom any future contract may be awarded as defined by the City’s personnel policy, Code of Alabama § 41-16-30 and Code of Federal Regulations § 200.318. Violations may constitute a crime under state law and subject the violator to civil and/or criminal penalties.

The City’s policy, as outlined in Section 2.6 of the Personnel System Policy (PSP), does not prohibit accepting *occasional* meals (currently not to exceed \$20) paid for by individuals or businesses doing business with or soliciting business from the City, or the receipt of gifts of minimal value (currently not to exceed \$35 in any calendar year) such as calendars or date books. The City recognizes that on occasion an employee will be in a higher cost area which will cause the \$35 limit to be exceeded. This may be due to the geographic location of the site chosen to dine. The employee shall use discretion in these matters. The employee should use such judgment that their actions are supportable.

CHAPTER 3 – MISCELLANEOUS

SECTION 3.1 – FREIGHT

All specifications and vendors’ prices shall include freight charges, “free on board” (F.O.B.), meaning the vendor assumes the responsibility of loss, to the appropriate City of Foley destination. All vendors shall be advised at the time prices are obtained that any freight charges quoted will be the maximum paid by the City and under no circumstances will additional freight charges be paid.

SECTION 3.2 – BILLING MAILING AND E-MAIL ADDRESS

The City of Foley’s billing address is as follows:

City of Foley
ATTN: Accounts Payable
P.O. Box 1750
Foley, AL 36536

Statements may also be e-mailed to ap@cityoffoley.org

SECTION 3.3 – PURCHASES MADE WITH GRANT FUNDS

When purchases are made with grant funds, the name of the grant, grant account number, and the amount to be charged must be plainly marked on the invoice or purchase order request. Copies of these invoices should be provided to the Grant Administrator for proper recording.

When Federal grant funds (direct or pass through funds) are used, the provisions of Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as Common Rule) and OMB Circular A-87 (Cost of Principal for States and Local Governments) apply when they are more stringent than local rules and policy.

When implementing projects using grant funds, the City of Foley must comply with all regulations in accordance with the grant.

SECTION 3.4 – EMERGENCY PURCHASES (DURING NORMAL OPERATIONS)

Emergency Purchases of goods or services may be made by Supervisor/Department Heads without first having obtained a purchase order if the following conditions are met.

- 1) “Emergency” signifies a situation that has suddenly arisen and requires speedy action (not enough time to secure an approved purchase order) or the provision of critical services by the City will be seriously interrupted. THE LACK OF PLANNING DOES NOT CONSTITUTE AN EMERGENCY.
- 2) The City Administrator, Executive Director, and Finance Director or their appointee shall be made aware of the situation and shall approve the purchase before it is made.

Refer to Section 6.5 for emergency purchases of \$30,000 or more which are subject to the competitive bid laws, or to Section 7.4(5) for emergency purchases of more than \$100,000 which are subject to the public works bid laws.

SECTION 3.5 – EMERGENCY PURCHASES (DURING A STATE OF EMERGENCY)

Certain aspects of the Purchasing Policy shall be waived during a locally declared State of Emergency or a State or Federally declared State of Emergency that affects our area. When purchases are directly related to the emergency event or the immediate recovery from such an event, purchases are allowed to be made at the discretion of the Supervisor/Department Head. Emergency purchases can be made without obtaining prior approval of the City Administrator, Executive Director, Finance Director or their designee. Purchase Orders will not be required and purchases in the amount of \$2,500 or more will not require three written proposals/quotes/estimates/prices. These measures shall be in place until such time as the State of Emergency is rescinded or other direction is provided by the City Administrator, Executive Director, Finance Director or their designee. Exceptions to this include public works projects in the amount of \$100,000 or more and the purchase of items subject to the competitive bid law that exceed \$30,000.

SECTION 3.6 – CONFLICT WITH STATE LAWS

In the event of a conflict between these policies, procedures, and regulations and any state law, the provisions of the state law will control.

SECTION 3.7 – PURCHASES REQUIRING PROPOSALS

Any purchases that are \$2,500 or more, up to \$29,999, will require three written proposals/quotes/estimates/prices to be submitted and attached to the purchase requisition in order to ensure items are purchased at the best possible price. Should a vendor fail to respond within the time allowed

(each vendor must be given equal time) or informs you that they are declining to provide a quote, your attempt should be documented and this will serve as one of your quotes. Should time allow, you are encouraged to seek a quote from another vendor. When vendor performance is a critical aspect of a purchase, past experience with a vendor shall be taken into consideration in conjunction with the price when awarding a proposal. Unfavorable experiences with a vendor should be documented and maintained for future reference. A summary of your experience can be forwarded to the Purchasing Agent to maintain.

Exceptions to this requirement are services or items that are available through State contract, approved Purchasing Cooperatives, the South Alabama Purchasing Association (SAPA) or any other approved contract.

SECTION 3.8 – PURCHASE OF COMPUTER/OFFICE EQUIPMENT

When purchasing computer related office equipment, software packages, printers, fax machines, etc., the City's IT Department is to be contacted to obtain their recommendation and follow their established procedures.

SECTION 3.9 – PROOF OF LIABILITY & WORKERS COMP INSURANCE

All vendors performing work or services on City property are required to provide proof of workers' compensation insurance prior to beginning work on City property.

The State of Alabama requires businesses with more than four employees to have workers' compensation insurance coverage, but the City is required to pay for workers' compensation insurance coverage for all vendors who work on City property, even if they have four or less employees, if their proof of insurance is not on file. In an effort to reduce costs, the City requires all vendors, regardless of their number of employees, to provide proof of workers' compensation insurance prior to beginning work on City property.

SECTION 3.10 – TRAVEL & TRAINING EXPENDITURES

Authorization for travel will not be granted and expenses will not be reimbursed unless the travel request is made and reimbursement claimed in accordance with the currently adopted City of Foley Travel Policy and Procedures.

When training can be accomplished locally or on-line and a registration fee is required, a requisition should be entered for the expense and a purchase order shall be issued if \$500 or more. Travel and training expenses under \$500 do not require a purchase order or a travel and training form.

SECTION 3.11 – GUIDANCE

As purchasing is an ever evolving field, there will be occasions where legal guidance is obtained for unique or complex expenditures, or where new expenditure categories must be created. The Purchasing Agent will update guidance documents for these situations and distribute them to management and all authorized City purchasers.

CHAPTER 4 - GENERAL PURCHASE PROCEDURE

SECTION 4.1 – GENERAL PROCEDURE

- 1) You are encouraged to “Shop Foley First” and then consider making purchases from businesses located within the County and then within the State.
- 2) It is the responsibility of the individual/department in need of an item to obtain the best pricing available. The purchasing department will continue to alert departments of cost saving measures or programs available with various companies and will provide assistance when needed.
- 3) The City reserves the right to disqualify vendors or bidders due to poor or inadequate experiences or references. In situations of this nature, written documentation of vendor performance and their failure to remedy known substandard performance and/or issues should be kept on file for future reference. A report of such incidents should be provided to the Purchasing Agent.
- 4) No products, goods, personal property, or services costing \$500 or more may be purchased without first having obtained an approved Purchase Order, except for those purchases which are expressly exempted herein from requiring one (as noted in Section 4.6).
- 5) A purchase order shall not be required for maintenance shop staff for repairs of less than \$2,000, or repairs of less than \$2,000 to on-road vehicles, construction equipment, fork lifts, tractors, wide-area mowers (60 inches or more) and bush hog mowers.

SECTION 4.2 – NEW VENDOR MANAGEMENT

- 1) Purchase orders cannot be issued for new vendors until the vendor has been added into the accounting system. If labor is a component of the purchase, proof of workers comp should be submitted with the new vendor information.
- 2) Before making a purchase, determine if the vendor is currently set up in our system. If assistance is needed to do so, please contact Finance Division vendor relations personnel.
- 3) Before a purchase is made from a new vendor, it is the responsibility of the individual/department making the purchase to obtain a W-9 from the vendor upon initial contact. Upon receipt of a W-9 by Accounts Payable, the vendor will be entered into the system within one business day.
- 4) Verify with the City Revenue Department that the new vendor has, or is exempt from having, a current business license.
- 5) The vendor may require the City to provide them with a tax exempt certificate. If so, notify Accounts Payable and provide them with the necessary information (company name and mailing address). The tax exempt certificate will be sent to the employee requesting by email or hard copy.
- 6) If a vendor requires the City to submit a credit application, provide Accounts Payable with the vendor forms and allow up to four business days for the credit application to be completed and returned to the vendor.

SECTION 4.3 – CREDIT CARD USAGE

Credit card usage shall comply with established procedures found in the currently adopted Credit Card Usage Policy.

When purchasing materials, supplies, etc., credit cards should only be used when the purchase cannot be made by check or store credit (ex. Wal-Mart, Office Depot, etc.).

SECTION 4.4 – COMPLETION OF A PURCHASE ORDER REQUISITION

After ensuring all provisions of Chapters 2 – 3.3 are met;

- 1) Before making a purchase of \$500 or more, an employee must submit an electronic Purchase Requisition through the accounting software. Provide as much details as possible on items being purchased.
- 2) Any purchases that are \$2,500 or more, up to \$29,999, will require three written proposals/quotes/estimates/prices to be submitted and attached to the purchase requisition in order to ensure items are purchased at the best possible price or that a service is chosen based upon price and the best solution to your needs. (Add a note in the “Detailed Description” section of the requisition stating quotes are attached.) Exceptions to this requirement are services or items that are available through State contract, approved Purchasing Cooperatives, the South Alabama Purchasing Association (SAPA) or any other approved contract. If a purchasing contract is being utilized for the purchase, the contract or master agreement number should be included within the “Detailed Description” box and noted on the invoice. If it is not possible to obtain three quotes because a service or product is not available from three vendors, an explanation should be provided in the “Detailed Description” section of the requisition. Per Section 3.8 of the Purchasing Policy, when seeking three written proposals, should a vendor fail to respond within the time allowed (each vendor must be given equal time) or informs you that they are declining to provide a quote, your attempt should be documented and this will serve as one of your quotes. Should time allow, you are encouraged to seek a quote from another vendor. When vendor performance is a critical aspect of a purchase, past experience with a vendor shall be taken into consideration in conjunction with the price when awarding a proposal.

Exceptions to the requirement to obtain three proposals/quotes/estimates/prices are as follows:

- a. If the product or equipment is a specific brand and requires the name brand parts for repair. (Example: John Deere mower needs John Deere parts for repair)
 - b. Project repairs or expansion of project when work should be done by the original installer or contractor for consistency, warranty, etc.
 - c. If a product is being replaced and consistency of like products needs to be maintained.
- 3) All items in excess of \$29,999 should be bid through the Competitive Bid Process.
 - 4) The appropriate account number should be noted in the “Account” section. It is the responsibility of the person entering the purchase requisition to make sure that the GL code is correct and that funds are budgeted and available in that account prior to submitting the requisition for approval. Contact the Finance Director if funds need to be transferred between accounts within the “other” category or the Human Resource Director within the “personnel” category. Invoice coding guidelines are included in “Attachment A” with examples for each account type.

- 5) In the event that the purchase of an item requires the use of the Department's credit card, the credit card will be listed as the vendor and the company the item was purchased from should be noted in the Description. If a store card is used and the name on the card is different from that of the store (for example the Wal-Mart card is used at Sam's Club), follow the same process noted for credit card purchases.
- 6) Purchase orders will not be released and paid until an invoice is received or Accounts Payable is provided with other instructions. Checks issued will automatically be mailed unless circumstances deem otherwise. The "Special Instructions" section should be completed during the requisition process to alert Accounts Payable of special situations and to provide them with specific details.
- 7) Blanket purchase orders may be submitted for items or services that will be required on an ongoing basis. It is the responsibility of the department head or assigned person to track expenditures in order to know the available balance and to ensure that the purchase order is always noted on receipts/invoices. Blanket purchase orders should be limited to one General Ledger account.
- 8) Once an Electronic Purchase Requisition is submitted, it is approved as follows:
 - a. Department Head - Verifies that the purchase is justified and authorizes expenditure to department account.
 - b. Purchasing Agent - Verifies established procedures are being followed, and that the requisition has been filled out correctly.
- 9) In the event there are issues with your purchase requisition, contact the Purchasing Agent.
- 10) Purchasing Agent will convert all approved Purchase Requisitions to Purchase Orders within one business day.
- 11) A copy of the Purchase Order will be emailed to the Department who may then proceed with the purchase.
- 12) When possible, the Purchase Order number should be provided to the vendor when placing the order and a request should be made for this number to be noted on the invoice.
- 13) Any changes to already approved purchase orders may only be made through the Purchasing Agent or Accounts Payable.

SECTION 4.5 – CONDITIONS AND PROCEDURES FOR ISSUANCE OF PURCHASE ORDERS

Purchase orders will not be issued and purchases are not to be made unless funds to pay for the purchase have been budgeted and there exist available funds in the current year and/or the purchase qualifies under the terms of the City's financial protocols.

It is the responsibility of the Supervisor/Department Head to develop procedures which will ensure that these purchasing policies and procedures are followed.

SECTION 4.6 – EXEMPTIONS FROM PURCHASE ORDER REQUIREMENTS

The purchase order procedures outlined herein shall not apply to the purchase or payment of

- 1) Recurring invoices, e.g., utilities, periodic pest control, termite bonds, fire sprinkler inspections, payroll benefit payments, periodicals.
- 2) Newspaper advertisements for display and legal ads.
- 3) Professional services or other services where the skills and personality of the individual plays a decisive role in the outcome (attorneys, physicians, architects, teachers, superintendents of construction, artists/musicians/performers, appraisers, engineers, consultants, certified public accountants, public accountant, lifeguard trainers, sports clinic instructor, etc.).
- 4) Insurance.
- 5) Professional dues, publications and manuals, etc.
- 6) Any goods or services which have been specifically authorized by the City Council, such as contracts approved by competitive bid, public works contracts, or contracts authorized by Council action where the vendor and approved amounts are specified. The responsible party or entity will insure that the expenditure does not exceed the amount appropriated. The responsible party or entity will generally be the party that requested the appropriation and/or will administer the expending of the appropriated funds.
- 7) Ballots and other election supplies for conducting City elections.
- 8) Purchase of maps or photographs from a federal agency.
- 9) Selection of paying agents and trustees for any security issued by the City.
- 10) Renewal of existing contracts.
- 11) Emergency purchases as defined within these procedures.
- 12) Mayor and Council travel and convention expense.
- 13) Travel expenses, when authorized and conducted in accordance with the City's Travel Policy and Procedures.

SECTION 4.7 – HOW TO PRESENT RECEIPTS FOR PAYMENT

- 1) Only employees in good standing with the City may pick up and/or receive goods after having been so designated by the appropriate supervisor. Supervisors are responsible for ensuring employees submit receipts in a timely manner so that they are received by Accounts Payable staff no later than three (3) business days after purchase.
- 2) All receiving tickets and invoices must be turned into the designated department representative as soon as possible and forwarded to Accounts Payable within three (3) business days after the purchase is made. The entire account number being charged and purchase order number if applicable, shall be plainly marked on the ticket, invoice, or purchase requisition. Buyers must sign the ticket/invoice legibly (if the signature is unreadable, print name under signature) and write a brief description of the purchase if there is no clear indication of what the purchase is. The supervisor or designated representative will review the receipt, initial and date his/her approval before submission to Accounts Payable.
- 3) Invoices should be turned into Accounts Payable by the established cut-off in order to be paid that week. Contact Accounts Payable for the current cutoff date/time. Changes to this schedule will periodically occur due to holidays and notification of such will be provided to all departments.

- 4) When purchasing by credit card, send a copy of the signed and coded confirmation page to Accounts Payable as soon as possible to be matched to the credit card bill. Credit cards are not to be used to buy from vendors who accept payment by check or where store cards are established unless traveling out of town. A copy of the credit card log documenting monthly activity shall be provided to Accounts Payable on a monthly basis by the 5th day of each month. This log will be utilized by Accounts Payable to match receipts, locate missing receipts or to provide additional information when required.
- 5) When buying on store credit, send a copy of the signed and coded invoice to Accounts Payable as soon as possible to be matched to the vendor's statement. A copy of the store credit card log documenting monthly activity shall be provided to Accounts Payable on a monthly basis by the 5th day of each month. This log will be utilized to match receipts, locate missing receipts or to provide additional information when required.
- 6) When checks are issued, they are automatically mailed unless special instructions are clearly written on the invoice or purchase order (i.e. pick up at City Hall/send to employee making purchase, etc.).
- 7) If Finance staff notices higher than normal amounts are being paid for items, the Department Head will be notified.

SECTION 4.8 – CENTRAL PURCHASING

From time to time, the City may consolidate purchasing of select goods or services to obtain them more efficiently and cost effectively. The consolidation may cross departmental lines at City level for such things as white paper, etc.

SECTION 4.9 – YEAR END CLOSURE TO PURCHASE ORDERS

The issuance of purchase orders will stop on September 15th (or September 14th if this date falls on Saturday or the 16th if this date falls on Sunday) each year and will not resume until the first day of the new fiscal year. All purchase orders must be closed out by the end of the fiscal year (September 30th). Any purchase order that is not complete prior to September 30 will be voided. The definition of complete is when a purchase order item has been physically received or the work has been completed. Purchase orders that are voided can be re-issued upon re-entry of a requisition by the appropriate City Department any time after October 1st. If Council has approved a capital purchase and the order was placed in a timely manner but receipt of the item has been delayed or back-ordered, the Finance Division will prepare a resolution approving carrying the budget over to the next fiscal year.

SECTION 4.10 – FAILURE TO OBTAIN A PURCHASE ORDER OR SPLITTING/DIVIDING PURCHASES

Items purchased without following the approved purchase order process will require the purchaser and their supervisor to make an appointment with the City Administrator to explain the details of violation. Splitting or dividing purchases in order to circumvent the purchase order process is a serious offense and will be reported to the City Administrator. Upon review, the City Administrator shall approve or disapprove the purchase. Should the purchase be disapproved, the employee who made the purchase may be held personally responsible for the cost of the item. Continued errors may lead to adverse employment action against the responsible employee.

CHAPTER 5 - PURCHASES MADE FROM PETTY CASH

SECTION 5.1 – GENERAL

Purchases of less than \$50 may be made from petty cash as long as the purchase adheres to the following guidelines.

SECTION 5.2 – PROCEDURE

In order to account for funds at all times, when cash is removed from the petty cash drawer, leave documentation in the cash box indicating the date, the amount of money received, who the cash was obtained by, and the purpose for which these funds will be used. When the transaction is complete, this documentation can be removed and replaced by the receipt.

SECTION 5.3 – PROHIBITED TRANSACTIONS

The following items may not be handled through the petty cash fund:

- 1) Purchases from vendors who have accounts set up with the City except for Judge of Probate where the recording amount is unknown.
- 2) Payment to employees for their personal services. Salaries, overtime, and all compensation must be paid through regular payroll procedures.
- 3) Cash advances to employees for any reason other than for specific qualified petty cash purchases.
- 4) Cashing any type of check.
- 5) Payment of freight bills, except carriers' (e.g. UPS, Express Mail) charges at the time of shipping.
- 6) Payment supported by a duplicate invoice or receipt.
- 7) Items of a personal nature which are generally not furnished by the City.
- 8) Mileage reimbursement.
- 9) Employee travel expenses, registrations, and tuition.
- 10) Subscriptions and memberships.
- 11) Items covered by existing purchasing contracts.
- 12) Computer software and hardware.
- 13) Printing services.
- 14) Split or divided purchases in order to avoid non-petty cash purchasing procedures.
- 15) Any purchase exceeding \$50. One exception to the \$50 maximum is the payment of time sensitive legal recordings. Petty cash may be used if the legal recording must be processed prior to the next scheduled issuance of checks by accounts payable.
- 16) Reimbursing employees for purchases made with their personal credit card.

CHAPTER 6 - COMPETITIVE BIDDING

(APPLICABLE TO CERTAIN CONTRACTS OF \$30,000 OR MORE)

SECTION 6.1 – COMPETITIVE BID LAWS

- 1) The competitive bid laws have been interpreted by the legal staff of the Department of Examiners of Public Accountants and the State Attorney General's office to mean that all expenditures of funds of whatever nature for labor services, work, or for the purchase or lease of materials, equipment, supplies or other personal property, involving \$30,000 or more, or for the lease of materials, equipment, supplies, or other personal property where the lessee is or becomes legally and contractually bound under the terms of the lease, to pay a total amount of \$30,000 or more, made by or on behalf of the City of Foley, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

- 2) This interpretation, also, means like items purchased by the City and its various departments involving \$30,000 or more in a fiscal year must be bid. A more complete discussion of this rule (commonly referred to as unit bidding) is provided in the next paragraph. Purchases may **not** be split in order to avoid the requirements of the bid laws. ***Willful violations of the competitive bid laws and the public works laws may subject the violator to civil and/or criminal penalties.*** Please refer to the chapters below pertaining to public works and competitive bid requirements. If a city wide contract has been secured for goods/services, departments should utilize the awarded vendor or be subject to bid law violations.
- 3) Unit Bids – State law requires unit bidding in any situation where the City reasonably knows that in a twelve-month period of time, \$30,000 or more of a given service or goods will be purchased. Gasoline, concrete, and white paper are examples. It is the responsibility of each Supervisor/Department Head to recognize these situations at the departmental level and Administration/Finance to recognize the need at a City-wide operational level. Unit bidding follows the same procedures as outlined herein for other competitive bidding.

SECTION 6.2 – CITY’S AMENDED BID PROCESS (RESOLUTION NO. 14-0483-RES)

Purchases of goods or services costing \$30,000 or more and which are not listed in one of the exemptions noted in Section 6.5 must be awarded and let in accordance with Alabama’s competitive bid laws (*See, Code of Alabama, § 41-16-2, et seq.*) and shall follow the City’s amended bid process as described in Resolution No. 14-0483-RES dated November 3, 2014 and as noted below.

The Purchasing Agent serves as the awarding authority of the Council and is authorized to make award of bid. The Purchasing Agent shall present Council with a monthly report of awards to be ratified and entered into the records of the City via Resolution.

- 1) Requests for procurement of routine operational budgeted items to obtain the lowest unit cost for items to be purchased throughout the year (such as pipe, culverts, fuel, uniforms, etc.) are to be submitted to the Purchasing Agent who will oversee the process of bidding or procurement from approved contracts.
- 2) Requests for procurement of Capital Purchases, such as equipment and other Departmental operational assets:
 - a. If included in the current year budget, approval by Council in the form of a resolution to bid or purchase from an approved contract must be given to proceed. Budgeted amount and account number should be noted in the resolution.
 - b. If not included in the current year budget, approval by Council in the form of a resolution to appropriate funding and to bid or purchase from an approved named contract must be given to proceed.
 - c. In the event of approval to bid, the requesting Purchaser shall deliver the resolution to the Purchasing Agent who will oversee the bid process. The approving resolution number will be used in lieu of a purchase order number for purchases from approved named contracts. Should a resolution not name the contract, a purchase order will be required. Prior to bid/contract price acceptance, additional Council action will be required only if the bid award or contract amount exceeds the amount previously approved.

SECTION 6.3 – STATE OF ALABAMA CONTRACTS

Commodities in an amount of \$30,000 or more that are subject to the competitive bid laws are exempt from bidding when purchased through vendors with a current and valid contract awarded by the Alabama Department of Finance - Division of Purchasing. Current State of Alabama contracts can be viewed at <http://www.purchasing.alabama.gov>.

There is an expiration date listed for each State of Alabama contract. Ensure that the contract is still active before contacting the vendor.

SECTION 6.4 – PURCHASING COOPERATIVES

Commodities may be purchased through a Cooperative Purchasing Contract approved by the Alabama Department of Examiners of Public Accounts, in lieu of going to bid, if these goods or services are not at the time available on the State purchasing program or are available at a price equal to or less than that on the State purchasing program. Purchase should be made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.

This shall not apply to goods for which a service or service contract is necessary to utilize the goods. You are not authorized to utilize a purchasing cooperative for the purchase of voice or data wireless communication services.

A list of approved purchasing cooperatives can be found on the Alabama Department of Examiners of Public Accounts website. There is an expiration date listed for each Purchasing Cooperative contract. Ensure that the contract is still active before contacting the vendor.

SECTION 6.5 – EXEMPTIONS

Exemptions from the competitive bid laws are listed below. Please note that this list is not all inclusive.

- 1) Utility services where no competition exists or the rates are fixed by law, regulation, or ordinance.
- 2) Purchase of insurance.
- 3) The purchase of ballots and supplies for conducting any primary, general, special or municipal election.
- 4) Contracts for securing of services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountant, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.
- 5) Contracts for furnishing of fiscal or financial advice or services.
- 6) Purchase of products made or manufactured by the blind or visually handicapped under the direction or supervision of the Alabama Institute for the Deaf and Blind.
- 7) Purchase of maps or photographs from any federal agency.
- 8) Purchase of manuscripts, books, maps, pamphlets, ~~or~~ periodicals and library/research electronic data bases of manuscripts, books, maps, pamphlets, or periodicals.
- 9) The selection of paying agents and trustees for any security issued by a public body.
- 10) Existing contracts up for renewal for sanitation or solid waste collection, recycling, and disposal between municipalities or counties, or both, and those providing the service.
- 11) Purchases of computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids and custom software.
- 12) Professional service contracts for the codification and publication of the laws and ordinances of a county or municipality.

- 13) Contractual services and purchases of commodities for which there is only one vendor or supplier, and contractual services and purchasing of personal property, which by their very nature are impossible to award by competitive bidding. (See sole source below.)
- 14) Contractual services and purchase of products related to, or having an impact upon, security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or infrastructures.
- 15) Any purchase of products where the price of the products is already regulated and established by state law.
- 16) Code of Alabama, Section 4-16-52, provides exception to the provisions of the bid law for repair parts and repair of heavy-duty off-highway construction equipment and of all vehicles with a gross vehicle weight rating of 25,000 pounds or greater. Repairs to vehicles / equipment / items that require major dis-assembly or transport or that in some other way do not lend themselves to the normal bid process, but are not anticipated to exceed \$40,000 per incident are not required to be bid.
- 17) Code of Alabama, Section 4-16-52, also applies to the leasing of heavy-duty, off-highway construction equipment and all vehicles with a gross vehicle rating of 25,000 pounds or greater when monthly rental is not more than \$10,000 per month per vehicle or equipment and does not exceed \$30,000 a month for all vehicles or equipment leased by the City.
- 18) Contracts regarding purchases of computer programs and software applications.
- 19) Contracts including purchases of services to aid in the prevention and detection of criminal activity by law enforcement agencies and community-oriented policing programs.

SECTION 6.6 – EMERGENCY PURCHASING

ACT 2023-135 allows the awarding authority to circumvent the requirements of the competitive bid law in emergency situations for which a delay in remedying the emergency would cause harm to any person(s) or public property. Such contracts can only be let to the extent necessary to mitigate the harm created by the emergency. Before employing this emergency exception, the city must document two or more price quotes or estimates before letting the contract and adopt a resolution declaring the nature of the circumstances, the action to be taken, and the reason for taking the action.

SECTION 6.7 – SOLE SOURCE PURCHASING

Competitive pricing is not required if the goods or services are available only through a single vendor or source. All “sole source” purchases must be approved prior to purchase. Approval of a sole source request for exemption from the competitive bid requirements will be made by Purchasing. If the company holds a patent on the product being purchased, please provide a patent number. Complete documentation to support such a request should be made with the initial request and be sufficient for filing as historical support for the decision to exempt. Purchasing will file all supporting documents.

SECTION 6.8 – LOCAL PREFERENCE FOR PERSONAL PROPERTY PURCHASES

As per State of Alabama Act 2015-293 and as adopted by the City of Foley by Resolution No. 15-2369-RES dated December 7, 2015, for the purchase or lease of personal property only, a responsible resident person, firm or corporation, whose bid is no more than five percent (5%) greater than the bid from the lowest responsible bidder, may be the successful bidder and the purchase and or contract may be awarded to such resident responsible bidder. A “resident” vendor is defined as one who has a place of business within the police jurisdiction of the City of Foley. It is the policy of the City to purchase from a local Foley resident vendor whenever possible.

In accordance with the above referenced Act and Resolution, the City of Foley may also award contracts to a local vendor if that company’s submission is within ten percent (10%) of a lower bid from outside the state.

SECTION 6.9 – ETHICS DISCLOSURE

Public Officials, employees, and spouses of employees are permitted to submit competitive bids or public works bids if they own or are directly associated with a business that sells a product or provides a service needed by the City of Foley but must disclose their association with this business entity in their response to a bid request. If such bid is deemed to be the most responsive/responsible bid, the agreement/contract entered into shall be submitted to the Ethics Commission within 10 days of the date of the agreement. If the Ethics Commission deems this agreement/contract to be unethical, the contract will become null and void.

SECTION 6.10 – COMPLIANCE WITH THE ALABAMA IMMIGRATION LAW

Vendors/contractors who are awarded a contract as a result of competitive bidding are required to comply with the Alabama Immigration Law, otherwise known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Vendors/contractors are required to provide proof of enrollment in the E-Verify system.

The Act is applicable only to employees and employers in Alabama. An out of state company with no employees in Alabama would not have to comply.

CHAPTER 7 - PUBLIC WORKS PROJECTS (APPLICABLE TO CERTAIN CONTRACTS IN EXCESS OF \$100,000)

SECTION 7.1 – DEFINITION OF PUBLIC WORKS

“Public works” are defined as 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. (Code of Alabama, 1975, § 39-2-1).

SECTION 7.2 – GENERAL

Contracts for “public works” are required to be awarded pursuant to the public works laws if they involve \$100,000 or more and shall be awarded and let in accordance with Alabama’ public works bid laws (See, Code of Alabama, 1975 § 39-2-1, *et seq.*) “Public works” contracts involving expenditures of less than \$100,000 do not have to be bid.

All public works projects shall follow the City’s amended bid process as described in Resolution No. 14-0483-RES dated November 3, 2014 and as noted below.

The Purchasing Agent serves as the awarding authority of the Council and is authorized to make award of bid. The Purchasing Agent shall present Council with a monthly report of awards to be ratified and entered into the records of the City via Resolution.

- 1) Requests for Infrastructure Improvement, Repair and Maintenance Projects:
 - a. All projects are subject to Council's review of the scope of work to be performed (Resolution 14-0445) and adoption of a resolution granting approval to proceed and allocation of budget funds.
 - b. In the event of approval to bid, the Project Owner shall deliver the resolution to the Purchasing Agent, or other designated Professional Firm, who will oversee the bid process. The approving resolution number will be used in lieu of a purchase order number for purchases made from an approved named contract. Should a resolution not name the contract, a purchase order will be required. Prior to bid/contract price acceptance,

additional Council action will be required only if the project will exceed the total budget allocation.

SECTION 7.3 – EXEMPTIONS

The following contracts are exempt from the public works laws:

- 1) Contracts for architectural, engineering, construction management, program management services in support of the public works, where the services rendered do not involve actual construction, repair, renovation or maintenance of the public work, either by their own forces or by subcontract, lease or otherwise, do not have to be bid.
- 2) Contracts for public works projects less than \$100,000.

SECTION 7.4 – EMERGENCY PROJECTS

ACT 2023-497 allows the awarding authority to circumvent the requirements of the public works bid law in emergency situations for which delay in remedying the emergency would cause harm to any person(s) or public property. Such contracts can only be let to the extent necessary to mitigate the harm created by the emergency. Before employing this emergency exception, the city must declare in writing the nature of the danger to be remedied, which must be made public and published.

SECTION 7.5 – SOLE SOURCE

No sole source vendors may be used on any public works project unless the following criteria are met:

1. Except for contracts for public roads, bridges, and water and sewer facilities, the municipality must document to the state building commission that the sole source product or services is indispensable to the improvement, that there are not viable alternatives and that this product or service is the only one that fulfills the function for which it is needed.
2. The architect or engineer has recommended the item or service.
3. All information substantiating the use of the sole source item – including the recommendation of the architect or engineer – is documented and made available for examination in the office of the municipality at the time of the advertising for sealed bids.

SECTION 7.6 – STATE OF ALABAMA GENERAL CONTRACTOR’S LICENSE REQUIREMENT

All bidders must have a General Contractor’s License, issued by the Alabama State Licensing Board for General Contractors, prior to bidding on a project, where the cost of undertaking is \$50,000 or more. (More than \$5,000 for swimming pool construction) (Code of Alabama, § 34-8-1).

SECTION 7.7 – BACKGROUND CHECK

The bid award of “Public Works” projects over \$100,000 will be contingent upon the results of a background check of the successful low bidder as stated via City Ordinance. According to the ordinance, the City of Foley will take criminal histories into account when deciding whether a low bidder is qualified to do work for the City. Anyone who owns or runs the day-to-day operations of a company that submits a bid or proposal for a City project must complete a questionnaire and consent to a background check as part of the bid review process. Repeat background checks will not be conducted for a designated period of time, as established by the Project Manager, unless circumstances dictate otherwise.

SECTION 7.8 – ETHICS DISCLOSURE

Public Officials, employees, and spouses of employees are permitted to submit competitive bids or public works bids if they own or are directly associated with a business that sells a product or provides a service needed by the City of Foley but must disclose their association with this business entity in their response to a bid request. If such bid is deemed to be the most responsive/responsible bid, the agreement/contract

entered into shall be submitted to the Ethics Commission within 10 days of the date of the agreement. If the Ethics Commission deems this agreement/contract to be unethical, the contract will become null and void.

SECTION 7.9 – COMPLIANCE WITH THE ALABAMA IMMIGRATION LAW

Vendors/contractors who are awarded a contract as a result of competitive bidding are required to comply with the Alabama Immigration Law, otherwise known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Vendors/contractors are required to provide proof of enrollment in the E-Verify system.

The Act is applicable only to employees and employers in Alabama. An out of state company with no employees in Alabama would not have to comply.

SECTION 7.10 – CONTRACTOR TAX CREDITS/INCENTIVES/REBATES

Should a Contractor seek tax credits, incentives or rebates for energy efficiency programs or any other such program through the Federal or State Government, the Contractor shall inform the City of its intent to apply and shall negotiate terms with the City.

This policy became effective with the adoption of Resolution Number _____-RES, attached; this 18th day of September 2023. A copy of this approved Purchasing Policy/Procedure shall be sent to each Supervisor/Department Head.

Ralph G. Hellmich, Mayor

Approved & Signed Per Resolution #_____