

# FINANCIAL POLICIES

## **VII. PURCHASING – REQUIREMENTS FOR FEDERAL GRANTS**

- A. This section shall apply to the awarding of sub-grants and contracts by the City stemming from federal grants to the City. This section shall have the same application on the awarding of sub-grants and contracts by the City stemming from state, county or other non-federal government entity grants originating as federal grants.
- B. Procurement Standards. (OMB Title 2 CFR, Subtitle A, Part 200, §200.318)
  1. The City shall maintain a contract administration system which ensures contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
  2. The City shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer or agent of the City shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    - a. The employee, officer or agent;
    - b. Any member of his or her immediate family;
    - c. His or her partner; or
    - d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in or a tangible personal benefit from a firm considered for award.
  3. The City's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Such a conflict will not arise where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. The City's standards of conduct provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the City.
  4. The City shall not enter into a contract with a non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe, unless the non-Federal entity maintains written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean due to relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
  5. The City shall avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economic purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
  6. The City shall consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
  7. The City shall consider using Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
  8. The City shall consider using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure its essential function is provided at the overall lower cost.
  9. The City shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past

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performance and financial and technical resources. Check [sam.gov](https://www.sam.gov) for vendor debarment or suspension.

10. The City shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.
  11. The City shall use time and material type contracts only:
    - a. After a determination is made that no other contract is suitable; and
    - b. If the contract includes a ceiling price the contractor exceeds at their own risk.
  12. The City alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims. These standards do not relieve the City of any contractual responsibilities under its contracts.
- C. Competition. (OMB Title 2 CFR, Subtitle A, Part 200, §200.319)
1. The City will conduct procurement transactions in a manner providing full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors developing or drafting specifications, requirements, statements of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements.
  2. The City shall conduct procurements in a manner prohibiting the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
  3. The City shall have written procedures for procurement transactions. These procedures will ensure that all solicitations:
    - a. Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, 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, shall 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. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
    - b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
  4. The City shall ensure prequalified lists of persons, firms or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The City shall not preclude potential bidders from qualifying during the solicitation period.
- D. Methods of Procurement to be Followed. The City shall use one of the following methods of procurement (OMB Title 2 CFR, Subtitle A, Part 200, §200.320):

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1. Procurement by Micro-Purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and adjusted periodically for inflation. As of the date of this ordinance, the micro-purchase threshold is \$3,500.
2. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and periodically adjusted for inflation. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. As of the date of this ordinance, the simplified acquisition threshold is \$150,000. For purchases exceeding fifty thousand (\$50,000), City Council approval is required.
3. Procurement by Sealed Bids (Formal Advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
  - a. For sealed bidding to be feasible, the following conditions should be present:
    - (1) A complete, adequate, and realistic specification or purchase description is available;
    - (2) Two or more responsible bidders are willing and able to compete effectively for the business; and
    - (3) The procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally based on price.
  - b. If sealed bids are used, the following requirements apply:
    - (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
    - (2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond;
    - (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
    - (4) 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 shall 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
    - (5) If there is a sound documented reason, any or all bids may be rejected.
4. Procurement by Competitive Proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
  - a. Requests for proposals shall be publicized and identify all evaluation factors including relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
  - b. Proposals will be solicited from an adequate number of qualified sources;
  - c. The City shall conduct technical evaluations of the proposal received and for selecting awardees;

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- d. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
  - e. 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 though A/E firms are a potential source to perform the proposed effort.
- 5. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances applies:
  - a. The item is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in a written request from the City; or
  - d. After solicitation of multiple sources, competition is determined inadequate.
- 6. Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms. (OMB Title 2 CFR, Subtitle A, Part 200, §200.321)
  - 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 include:
    - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - (2) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
    - (3) 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;
    - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
    - (5) 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
    - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections 6.b.(1) through (6) of this section.
- 7. Contracts Cost and Price. (OMB Title 2 CFR, Subtitle A, Part 200, §200.323)
  - a. The City shall perform a cost or price analysis in every procurement action exceeding the simplified acquisition threshold including contract modifications. The method and degree of analysis will be dependent on the facts surrounding each procurement situation. 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 shall be given to the complexity of the work to be

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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. Costs or prices based on estimated costs for contracts under the Federal award will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City under Subpart E – Cost Principles of Title 2, Subtitle A, Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).
  - d. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
8. Federal Awarding Agency or Pass-Through Entity Review. (OMB Title 2 CFR, Subtitle A, Part 200, §200.324)
- 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 purchase.
  - b. The City shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposal or invitations for bids, or independent cost estimates when:
    - (1) The City's procurement procedures or operation fails to comply with the procurement standards of Title 2, Subtitle A, Part 200, Subsection 200.324;
    - (2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
    - (3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;
    - (4) The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
    - (5) A proposed modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
  - c. The City may be exempted from the pre-procurement review in subsection 8.b. above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards set forth in Title 2, Subtitle A, Part 200, or the City self-certifies compliance with such standards if self-certification is permitted by the Federal awarding agency or pass-through entity.
9. Bonding Requirements. (OMB Title 2 CFR, Subtitle A, Part 200, §200.325) For public projects, the City shall require bid guarantees, performance bonds, and payment bonds consistent with Title 2, Part 200, Section 200.325 of the Code of Federal Regulations.
10. Contract Provisions. (OMB Title 2 CFR, Subtitle A, Part 200, §200.326) The City's contracts shall contain the provisions in Appendix II to Title 2, Subtitle A, Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards, as applicable.