

CITY OF EAST LANSING

POLICY RESOLUTION NO. 2022-10

Policy Resolution 2022-10 replaces Policy Resolution 2016-6

A RESOLUTION ESTABLISHING POLICIES FOR FEDERAL GRANT AWARDS

WHEREAS, the City applies for and receives thousands of dollars annually from the Federal Government; and,

WHEREAS, the Office of Management and Budget issued federal grant award reform rules, widely known as the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards - 2 CFR Chapter I, Chapter II, Part 200, et al.; and,

WHEREAS, these rules detail the procedures non-federal entities must follow when procuring property, goods, and services under a federal award; and,

WHEREAS, the City Council recognizes the need to have clear and concise policies with respect to federal grant awards; and,

WHEREAS, with assistance and guidance from legal counsel, the Finance Department compiled policies for federal grant awards;

NOW THEREFORE, BE IT RESOLVED, the City Council hereby adopts the attached Policies for Federal Grant Awards;

BE IT FURTHER RESOLVED, that these policies shall serve as the foundation for purchases of all property, goods and services with federal grant funds, and that any City policy in direct conflict hereby defaults to the terms and standards of these policies;

BE IT FURTHER RESOLVED, that these policies shall be reviewed and amended from time to time as deemed necessary by the Finance Director in compliance with federal guidelines;

BE IT FURTHER RESOLVED, that upon effective passage of this resolution, the City Council directs the Finance Department to issue to all City departments and offices a copy of said policies.



Ron Bacon, Mayor

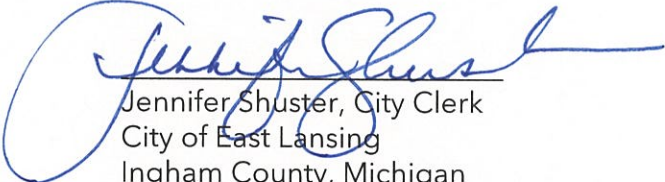
Dated: 5-27-22

Moved by Councilmember: Brookover

Supported by Councilmember: Gregg

Adopted: Yeas: 5
 Nays: 0
 Absent: 0

CLERKS CERTIFICATION: I hereby certify that the foregoing is a true and complete copy of a Policy Resolution adopted by the East Lansing City Council at its meeting held on May 24, 2022, the original of which is part of the Council's minutes.


Jennifer Shuster, City Clerk
City of East Lansing
Ingham County, Michigan

City of East Lansing



Policies for Federal Grant Awards

May 24, 2022

Purpose

The purpose of this policy is to ensure that federal grant awards are in compliance with Title 2 of the Code of Federal Regulations.

1.0 Scope

This policy applies to all employees of the City of East Lansing (herein "City") working with federal grant funds including those who are authorized to initiate and/or approve purchases paid with federal grant funds.

2.0 Activities Allowed or Unallowed

The specific requirements for activities allowed or unallowed are unique to each federal program and are found in the federal statutes, regulations, and the terms and conditions of the federal award pertaining to the program. For each federal award, the City will only participate in activities that are allowable under the terms and conditions of that award.

3.0 Allowable Costs/Cost Principles

The City ensures that costs charged to federal grants are in accordance with the individual grant agreements and grantor approved budgets, as well the regulations contained in the U.S. Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E - Cost Principles. The designated Grant Project Manager and their Director that are responsible for administering each respective grant are responsible for determining whether costs are allowable. All expenditures and payroll related charges are also subject to the City's existing approval processes.

A proposal to establish a cost allocation plan or indirect cost rate must be certified using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX of the U.S. Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The certificate must be signed on behalf of the City by the City Manager or Finance Director, whether it is submitted to the applicable Federal agency or maintained on file.

4.0 Cash Management Procedures

The majority of grant funds received by the City are received via the reimbursement payment method.

For the grant funds that are received in advance, the City will minimize the time elapsing between the transfer and disbursement of funds. Unless otherwise dictated by federal statutes, regulations, or in the terms and conditions of the grant award, advance payments will be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the City in carrying out the purpose of the approved program or project and disbursements will be made as close to the receipt of the grant funds as administratively feasible. Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all federal awards made by the federal awarding agency to the City.

Advance payments of federal funds will be deposited and maintained in an insured, interest-bearing account. Unless otherwise stated in the terms and conditions of the federal award, any interest earned in excess of \$500 per year will be remitted annually as outlined in the U.S. Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D - Post Federal Award Requirements.

5.0 Eligibility

The specific requirements for eligibility are unique to each federal program and are found in the statutes, regulations, and the terms and conditions of the federal award pertaining to the program. For federal awards that eligibility is applicable, the City will determine that the individuals, groups of individuals, or subrecipients are eligible to participate in the program based on the eligibility requirements set forth within the terms and conditions of the federal award. The supporting documentation that was used to confirm the eligibility of participants will be maintained by the designated Grant Project Manager.

6.0 Equipment and Real Property Management

Equipment or real property being purchased with federal grant funds will be capitalized if the item has a useful life of more than one (1) year and a per-unit cost of \$5,000 or greater. Equipment purchased with federal funding must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the federal award.

The City, as a minimum, will meet the following requirements:

- a) Maintain property records that include a description of the property, a serial number or other identification number, the source of funding for the property (including FAIN), who holds title, the acquisition date, and cost of the property, percentage of federal participation in the project costs for the federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property
- b) A physical inventory of the property will be taken at least every two years with the results being reconciled with the property records
- c) Develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft will be investigated
- d) Develop adequate maintenance procedures to keep the property in good condition
- e) If the property is to be sold, ensure the highest possible return

When the property is no longer needed for the originally authorized purpose, the City must refer to the terms and conditions of the federal award or obtain disposition instructions from the federal awarding agency or pass-through entity.

7.0 Matching, Level of Effort, Earmarking

The specific requirements for matching, level of effort, and earmarking are unique to each federal program and are found in the statutes, regulations, and the terms and conditions of the federal award pertaining to the program. For federal awards that this specific requirement is applicable for, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the City's cost sharing or matching when such contributions meet all of the following criteria:

- a) Are verifiable from the City's records
- b) Are not included as contributions for any other federal award
- c) Are necessary and reasonable for accomplishment of project or program objectives
- d) Are allowable under the U.S. Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E - Cost Principles
- e) Are not paid by the federal government under another federal award, except where the federal statute authorizing a program specifically provides that federal funds made available for such program can be applied to matching or cost sharing requirements of other federal programs

- f) Are provided for in the approved budget when required by the federal awarding agency
- g) Confirm to other provisions of the U.S. Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D – Post Federal Award Requirements, as applicable

8.0 Period of Performance

The City may only charge allowable costs incurred during the approved budget period of a federal award's period of performance. Any costs incurred before the federal awarding agency or pass-through entity made the federal award may be charged if those costs are authorized by the federal awarding agency or pass-through entity. A period of performance may contain one or more budget periods.

Unless the federal awarding agency or pass-through entity authorizes an extension, the City must liquidate all financial obligations incurred under the federal award not later than 120 calendar days after the end date of the period of performance or as specified in the terms and conditions of the federal award.

9.0 Procurement and Suspension and Debarment

9.1 Suspension and Debarment Compliance

The City will comply with the provisions noted within 2 CFR part 180 to ensure that federal awards, subawards, or contracts are entered into with certain parties that have been debarred, suspended, or otherwise excluded from or ineligible for participation in federal programs or activities.

9.2 General Procurement Standards

- A. As representatives of the City, all employees are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity and the use of good judgment. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the City.

The following *Code of Conduct* shall govern the performance, behavior and actions of the City, including employees, directors, appointed or elected officials, volunteers, or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts:

- a) No employee, director, appointed or elected official, volunteer, or agent of the City shall participate in the selection, award, or administration of contracts supported by a federal award if a conflict of interest is real or apparent to a reasonable person.
- b) Conflicts of interest may arise when any employee, officer, or agent of the City, 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 real or apparent financial or other interest in or a tangible personal benefit from a firm considered for the contract.
- c) No employee, director, appointed or elected official, volunteer, or agent of the City shall do business with, award contracts to, or show favoritism toward a member of his or her immediate family, spouse's family or to any company, vendor, or contractor or parties to subcontractors who either employs or has any relationship to a family member; or award a contract or bid which violates the spirit or intent of federal, state and local procurement laws and policies established to maximize free and open competition among qualified vendors.
- d) The City's employees, directors, appointed or elected officials, volunteers, or agents shall neither solicit nor accept gratuities, favors, gifts, consulting fees, trips, or anything having a

monetary value in excess of twenty-five dollars (\$25.00) from a vendor, potential vendor, from the family or employees of a vendor, contractors or parties to subcontracts.

- e) All employees, officers, and agents of the City shall adhere to the City's Ethics Policies and the Code of Conduct for City of East Lansing Employees.
 - f) Disciplinary measures for violations of the *Code of Conduct* by employees, directors, appointed or elected officials, volunteers, or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts could lead to disciplinary measures, up to and including possible termination of employment.
- B. Proper oversight must be maintained to ensure that contractors perform in accordance with the terms, conditions, and specifications of the City's contracts or purchase orders.
 - C. Acquisition of unnecessary or duplicative items must be avoided. Consideration should be given to consolidating or dividing procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
 - D. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the City shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
 - E. Procuring federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs shall be utilized.
 - F. Value engineering clauses may be used 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 that its essential function is provided at the overall lower cost.
 - G. Contracts shall only be awarded 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 performance, and financial and technical resources.
 - H. Records will be maintained 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. The Department administering/managing the grant will be the repository for said records and records shall be maintained for a period of not less than seven (7) years.
 - I. Time and material type contracts (open-ended) may be used only after a determination that no other contract is suitable. Time and material type contract means a contract where the cost to the City is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Each time and material contract will set a ceiling price that the contractor exceeds at its own risk. A higher degree of oversight is required in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
 - J. The City alone will 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. The federal awarding agency will not substitute its judgment for that of the City unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

9.3 Competition

- A. All procurement transactions must be conducted in a manner providing full and open competition.
- B. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals will be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - a) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - b) Requiring unnecessary experience and excessive bonding;
 - c) Noncompetitive pricing practices between firms or between affiliated companies;
 - d) Noncompetitive contracts to consultants that are on retainer contracts;
 - e) Organizational conflicts of interest;
 - f) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
 - g) Any arbitrary action in the procurement process.
- C. Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed 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. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) 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.
- D. All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, 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.
- E. Bids and proposals shall identify all the requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- F. All prequalified lists of persons, firms, or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and free competition. Also, potential bidders shall not be precluded from qualifying during the solicitation period.

9.4 Methods of Procurement

One of the following procurement methods shall be used:

A. Procurement by Micro-purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, micro-purchases will be distributed equitably among qualified suppliers. Micro-purchases may be awarded after soliciting three documented competitive quotations or if the Finance Director (or designee) considers the price to be reasonable.

B. 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 \$20,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

C. Procurement by Sealed Bids (formal advertising)

Bids greater than \$20,000 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. The sealed bid method is the preferred method for procuring construction, if the following conditions apply:

- 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.

If sealed bids are used, the following requirements shall apply:

- a) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- 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.

D. 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 must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b) Proposals must be solicited from an adequate number of qualified sources;
- c) The following method for conducting technical evaluations of the proposals received and for selecting recipients shall be used:
 1. After all proposals are opened and recorded, the Managing Department's designated staff member shall determine if the proposals are responsive. A responsive proposal conforms in all material respects to the RFP.
 2. Select the Evaluation Committee members. At a minimum, members should consist of finance staff and an end user in the Managing Department with decision making authority.
 3. Create a scoring matrix with weighted factors based on the evaluation criteria stated in the RFP.
 4. Provide members with copies of the proposals and the scoring matrix.
 5. Members individually review and score all proposals based on the criteria in the RFP. Include written justification for each scoring category.
 6. Members submit scoring matrices and comments for each responsive proposal to the designated staff member in the Managing Department.
 7. The Managing Department compiles all the members' matrices to arrive at final scorings.
 8. A meeting is scheduled with all members to discuss all aspects of the proposals and final scorings.
 9. The members short-list the top candidates.
 10. Schedule interviews, if necessary with top candidates.
 11. Ask for Best and Final offers from top candidates (optional).
 12. All members make a joint written recommendation. All scoring sheets, justification and rationale for the recommendation and any other variables that may have been considered are sent for approval to the City Manager or City Council, subject to the dollar thresholds identified in City Council policy.
- d) Any response that takes exception to any mandatory items in this proposal process may be rejected and not considered;
- e) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,
- f) Competitive proposal procedures may be used 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.

E. Procurement by Noncompetitive Proposals

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 apply:

- a) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see 9.4 A.)
- b) The item is available only from a single source;
- c) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- d) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or

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

9.5 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area (a place of high unemployment) Firms

- A. All necessary affirmative steps will be taken to assure that small and minority-owned businesses, women-owned business enterprises, and labor surplus area firms are used when possible.
- B. Affirmative steps must include:
 - a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c) 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;
 - d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e) 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,
 - f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this section.

9.6 Domestic Preferences for Procurements

- A. As appropriate and to the extent consistent with law, the City should, 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 this award.
- B. For purposes of this section:
 - a) "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.
 - b) "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.

9.7 Procurement of Recovered Materials

A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must 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 by 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.

9.8 Contract Cost and Price

- A. A cost or price analysis shall be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates shall be made prior to receiving bids or proposals.
- B. Profit shall be negotiated 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. Costs or prices based on estimated costs for contracts under the federal award are 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 Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The City may reference its own cost principles that comply with the federal cost principles.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

9.9 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. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the City desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- B. The City will make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - a) Procurement procedures or operation fails to comply with the procurement standards in this part;
 - b) The procurement is expected to exceed the Simplified Acquisition Threshold (\$250,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - c) The procurement, which is expected to exceed the Simplified Acquisition Threshold (\$250,000), specifies a "brand name" product;
 - d) The proposed contract is more than the Simplified Acquisition Threshold (\$250,000) and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - e) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold (\$250,000).
- C. The City is exempt from the pre-procurement review in paragraph (B) of this section if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- a) 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. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
- b) 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.

9.10 Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (\$250,000), the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the City provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- a) A bid guarantee from each bidder equivalent to five percent (5.0%) 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 (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and,
- c) A payment bond on the part of the contractor for 100 percent (100%) 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.

9.11 Contract Provisions

In addition to other provisions required by the federal agency or non-federal entity, all contracts made by the City under the federal award must contain provisions covering the following, as applicable.

- A. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System

in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- J. See §200.322 Prohibition on certain telecommunications and video surveillance services or equipment.

10.0 Program Income

Program income is gross income earned by the City that is directly generated by a supported activity or earned as a result of the federal award during the period of performance, unless otherwise noted by the federal awarding agency or the terms and conditions of the federal award.

Program income includes, but is not limited to income from: fees for services performed, the use of real or personal property acquired under federal awards, the sale of commodities or items fabricated under federal awards, and principal and interest on loans made with federal award funds.

Program income must be deducted from total allowable costs in order to determine net allowable costs unless otherwise dictated by the federal awarding agency or the terms and conditions of the federal award.

11.0 Reporting

Unless otherwise authorized by the federal awarding agency, the City will use the standard financial reporting form as approved by the United States Office of Management and Budget. The City will report to the federal awarding agency utilizing the basis of accounting requested by the federal awarding agency at least on an annual basis, but more frequently if stated in the terms and conditions of the federal award.

Annual and final fiscal reports or vouchers requesting payment under the federal agreements must include a certification by the City Manager. It must read as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

12.0 Subrecipient Monitoring

If the City becomes a pass-through entity, it must:

- a) Clearly identify to the subrecipient the award as a subaward at the time of subaward and all of the requirements imposed on the federal awards by federal statutes, regulations, and the terms and conditions of the award
- b) Evaluate the risk of noncompliance for each subrecipient
- c) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes and is in compliance with the rules and requirements placed on the federal award

13.0 Special Tests and Provisions

The specific requirements for special tests and provisions are unique to each federal program and are found in the statutes, regulations, and the provisions of contract or grant agreements pertaining to the program. The City will meet any provision stated in the federal award.

14.0 Retention Requirements

Financial records, supporting documents, statistical records, and all other City records pertinent to a federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity in the case of a subrecipient. The only exceptions are the following:

- a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b) When the City is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- c) Records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition.
- d) When records are transferred to or maintained by the federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the City.
- e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the City's fiscal year in which the program income is earned.
- f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - a. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.
 - b. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the federal government (or to the pass-through entity) for negotiating purposes, then the three (3) year retention period for the proposal, plan or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

END OF POLICY