



**GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET**



| | | | |
|---------------------|--|-------------------|--------------|
| Meeting Date | 01/17/2024 | Department | City Manager |
| Agenda Item | 4d. Changes to the City of Gardiner Procurement Policy | | |
| Est. Cost | | | |

Background Information

The City of Gardiner has a procurement policy. During this years audit the Auditor has recommended changes to the Procurement policy due to federal requirements. Please see the attached policy. Finance Director Brown and Ron Smith from RHR Smith will be on hand to answer any questions.

| | |
|---|--|
| Requested Action | " I move to approve the changes to the Procurement Policy as presented." |
| City Manager and/or Finance Review | City Manager and Finance Director Approve this action |
| Council Vote/ Action Taken | |
| Departmental Follow-Up | |

| | | | |
|----------------------------|-------------------------------|----------------------------------|--------------------------------|
| City Clerk Use Only | 1 st Reading _____ | Advertised _____ | EFFECTIVE DATE _____ |
| | 2 nd Reading _____ | Advertised _____ w/in 15 Days | |
| | Final to Dept _____ | Updated Book _____ | Online _____ |

FEDERAL PROCUREMENT PROCEDURES

This Federal Procurement Manual governs the procurement and purchase of property, goods, and services using any federal award,¹ in whole or in part, which is subject to the Uniform Grant Guidance, codified at 2 CFR Part 200.

To the extent necessary or convenient, the City Manager or his or her designee, shall implement further written measures to ensure compliance with these procedures and any applicable federal laws and rules, including any applicable provisions of the Uniform Grant Guidance and the federal award terms and conditions. Any such written measures shall be made part of this manual. In addition, the City Manager or his or her designee, should review and update this manual at least every five years, on a cycle roughly corresponding with the five-year Federal review of the Uniform Grant Guidance as provided in 2 CFR § 200.109.

A. OVERVIEW

The City expects all procurements of property, goods, or services made by the municipality using federal awards to be consistent with sound business practices and applicable federal laws and rules, including the Uniform Grant Guidance.

These administrative procedures, in combination with the municipality's written policies are intended to comply with the federal requirement that the municipality must (1) use its own documented procurement procedures consistent with applicable federal, state, and local laws and regulations and, more specifically, conform to the procurement standards identified in 2 CFR §§ 200.317 through 200.327; and (2) maintain written standards of conduct covering conflicts of interest—real and perceived—for staff engaged in the selection, awarding, or administration of a contract. (2 CFR § 200.318(a), (c).)

The City Manager or his or her designee, acting singly, (the "Purchasing Agent") shall be responsible for implementing these administrative procedures and shall have direction and control over the purchasing of property, goods, and services for the municipality using federal funds.

Wherever these administrative procedures are inconsistent with applicable federal laws and rules, or the terms and conditions of a federal award, the provisions of the applicable federal laws, rules, or award terms and conditions shall control.

B. GENERAL PROCUREMENT PROCEDURES

1. **Full and Open Competition.** All procurements must be conducted in a manner that provides full and open competition. Real or perceived unfair advantages will be avoided. Accordingly, the municipality will not (i) place unreasonable requirements on firms or vendors to qualify for a procurement, (ii) require unnecessary experience or use excessive bonding, (iii) use noncompetitive pricing practices between firms or affiliated companies, (iv) allow organizational conflicts of interest, (v) specify a "brand name" product without allowing firms or vendors to offer an equal alternate product, or (vi) allow any arbitrary action in the procurement process. To ensure objective contractor performance and eliminate unfair competitive advantage, firms or vendors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals must be excluded from competing for such procurements. (2 CFR § 200.319(a), (b).)

¹ A "federal award" is any federal financial assistance (including cost-reimbursement contracts) that a municipality receives either directly from a federal agency or indirectly from a pass-through entity such as the State education department. See 2 CFR § 200.1. Most, but not all, federal awards received by the municipality are subject to the Uniform Grant Guidance. To confirm whether a federal award is subject to the Uniform Grant Guidance, review the terms and conditions of the applicable grant agreement or cooperative agreement and the applicability provisions of the Uniform Grant Guidance, codified at 2 CFR § 200.101.

2. **Responsible Contractors.** The municipality must award contracts only to responsible contractors who are able 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. (2 CFR § 200.318(h).)
3. **Oversight of Contractors.** The municipality must maintain a contract administration and oversight system to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (2 CFR § 200.318(b).)
4. **Fostering Economy and Efficiency.** The municipality must avoid purchasing unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase, and to using federal surplus equipment and property. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. To foster greater economy and efficiency, consideration should also be given to: (i) entering into state and local intergovernmental agreements or interentity agreements where appropriate for procurement or use of common or shared goods and services, (ii) using federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs, and (iii) using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. (2 CFR § 200.318(d)-(g).)
5. **Geographic Preferences Prohibited; Domestic Preferences for U.S. Goods, Products, or Materials Encouraged.** The municipality must conduct procurements so as to prohibit the use of statutorily or administratively imposed state or local geographic preferences in the evaluation of bids or proposals, except (i) where applicable federal statutes expressly mandate or encourage geographic preference or (ii) when contracting for architectural and engineering (A/E) services, so long as its application leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project. As appropriate and to the extent consistent with law, the municipality 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 a Federal award. For purposes of this section, "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. For purposes of this section, "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. (2 CFR §§ 200.319(c), 200.322.)
6. **Clear and Accurate Technical Requirements.** The municipality must have written procedures for procurement transactions that incorporate a clear and accurate description of the technical requirements for the goods or services to be procured, identify all requirements which offerors must fulfill, and identify all other factors to be used in evaluating solicitations. Technical descriptions (i) must not, in competitive procurements, contain features which unduly restrict competition; (ii) may include a statement of the qualitative nature of the goods or services to be procured; (iii) when necessary, must set forth those minimum essential characteristics and standards to which goods or services must conform if they are to satisfy their intended use; (iv) should avoid detailed product specifications if possible; and (v) may use a brand name or equivalent description as a means to define performance or other salient requirements of procurement when it is impractical or uneconomical to make a clear and accurate description of the technical requirements (the specific features of the named brand which must be met by offerors must be clearly stated). (2 CFR § 200.319(d).)

7. **Prequalified Contractor Lists.** The municipality must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The municipality must not preclude potential bidders from qualifying during the solicitation period. (2 CFR § 200.319(e).)
8. **Procurement of Items Made with Recovered Materials.** The municipality 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 certain items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, Subpart B that contain the highest percentage of recovered materials, as long as the item is available at a reasonable price and within a reasonable time, and a satisfactory level of competition is maintained. This applies when the municipality purchases \$10,000 or more worth of a designated item during a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more. Section 6002 also requires 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. (2 CFR § 200.323; 40 CFR § 247.2(a)(1).)

C. PROCUREMENT METHODS AND THRESHOLDS

1. **Methods of Procurement.** The municipality must use one of the following five methods of procuring goods or services: micro-purchases, small purchases, sealed bids, competitive proposals (a.k.a. requests for proposals), and non-competitive proposals (a.k.a. sole source procurement). (2 CFR § 200.320.)
 - a. **Micro-purchases (less than \$10,000 as of November 12, 2020).** Micro-purchases up to the federal micro-purchase threshold (\$10,000 as of November 12, 2020)² may be made without soliciting competitive quotations if the Purchasing Agent considers the price to be reasonable based on research, experience, purchase history, or other information and documents. To the maximum extent practicable, the Purchasing Agent must distribute micro-purchases equitably among qualified suppliers, vendors, or firms. (2 CFR §§ 200.67, 200.320(a)(1).)

On an annual basis, a municipality may establish a micro-purchase threshold higher than the federal micro-purchase threshold, up to \$50,000. The municipality must maintain documentation, which must be made available to the federal awarding agency and auditors in accordance with 2 CFR § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following: (i) a qualification as a low-risk auditee, in accordance with the criteria in 2 CFR § 200.520 for the most recent audit; (ii) an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or (iii) for public institutions, a higher threshold consistent with state law. (2 CFR § 320(a)(1)(iv).)

- b. **Small Purchases (\$250,000 or less as of November 12, 2020).** Small purchases up to the federal simplified acquisition threshold (\$250,000 as of November 12, 2020)³ may be made using simple, informal procurement methods and without requiring sealed bids. For any such purchases, the Purchasing Agent must obtain price or rate quotes from an adequate number of qualified vendors or firms (preferably, from at least three qualified vendors or firms). The Purchasing Agent shall document any price or rate quotes received, whether written or oral. (2 CFR §§ 200.88, 200.320(a)(2).)

² For procurements utilizing federal funds obtained prior to November 12, 2020, the micro-purchase threshold is \$3,500. The threshold is subject to adjustment every five years in the Federal Acquisition Regulations.

³ For procurements utilizing federal funds obtained prior to November 12, 2020, the simplified acquisition threshold is \$150,000. The threshold is subject to adjustment every five years in the Federal Acquisition Regulations ("FAR").

- c. **Sealed Bids (over \$250,000 as of November 12, 2020).** For purchases in excess of the federal simplified acquisition threshold (\$250,000 as of November 12, 2020) sealed bidding is used if (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the business; and (iii) 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. This is the preferred method for procuring construction.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids;
- The invitation for bids must be publicly advertised;
- 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;
- All bids will be opened at the time and place prescribed in the invitation for bids;
- The bids must be opened publicly;
- A firm fixed price (lump sum or unit price) contract award will be made in writing to the lowest responsive and responsible bidder whose bid conforms to all material terms and conditions of the invitation to bid. Where specified in bidding documents, factors such as discounts, transportation costs, 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
- Any or all bids may be rejected if there is a sound documented reason.

(2 CFR §§ 200.88, 200.320(b)(1).)

- d. **Requests for Proposals (over \$250,000 as of November 12, 2020).** For purchases in excess of the simplified acquisition threshold (\$250,000 as of November 12, 2020), this procurement method is used when conditions are not appropriate for the use of sealed bids. Typically, a request for proposals ("RFP") seeks proposals that are evaluated qualitatively such that price is not the primary evaluation criterion.

Contracts may be awarded on either a fixed price or cost-reimbursement basis. If this procurement method is used, the following requirements apply:

- RFPs must be publicized and identify all evaluation factors and their relative importance. Any response to an RFP must be considered to the maximum extent practical;
- The RFP must identify the method to be used by the municipality for conducting technical evaluations of the proposals received and making selections;
- Proposals must be solicited from an adequate number of qualified offerors; and
- The Purchasing Agent must award a contract to the responsible offeror whose proposal is most advantageous to the municipality, with price and other factors considered; however, any and all proposals may be rejected if there is a sound documented reason.

The Purchasing Agent 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, may only be used in procurement of A/E professional services. It cannot be used to purchase other types of services even if A/E firms are a potential source to perform the proposed effort. (2 CFR § 200.320(b)(2).)

e. **Non-Competitive Proposals (Sole Source); Emergencies.** Procurements may be made through a non-competitive process (i.e., through the solicitation of a proposal from only one source) only when one or more of the following circumstances apply:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see Section C.1.a, above);
- The item is available only from a single source;
- A public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the municipality; or
- After solicitation of a number of sources, competition is determined inadequate.

The Purchasing Agent must document the basis for the sole source procurement by documenting the basis for any exigency or emergency, obtaining express authorization from the federal awarding agency or pass-through entity, or demonstrating a good faith effort on the part of the municipality to solicit proposals from a number of sources. (2 CFR §§ 200.320(c), 200.324(b)(2).)

2. **Purchases Over \$25,000.** For purchases exceeding \$25,000, prior to contracting with a vendor, the Purchasing Agent shall use the System for Award Management (SAM) to search for the vendor by name, tax identification number, or another characteristic to make sure that the vendor has not been suspended or debarred from performing federally funded work. (2 CFR §§ 200.206(d), 180.220.)

3. **Purchases Over the Simplified Acquisition Threshold (\$250,000 as of November 12, 2020).** The following additional procedures apply to purchases exceeding the simplified acquisition threshold:

a. **Cost/Price Analysis.**

- i. The Purchasing Agent must perform a cost or price analysis in connection with every procurement in excess of the simplified acquisition threshold, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular situation, but as a starting point, the Purchasing Agent must make independent estimates before receiving bids or proposals.
- ii. The Purchasing Agent must negotiate profit as a separate element of the price for each contract where there is no price competition and, 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.
- iii. Prices based on estimated costs for contracts under a federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable under Subpart E (Cost Principles) of 2 CFR Part 200. The municipality may reference its own cost principles that comply with the federal cost principles.
- iv. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

(2 CFR § 200.324.)

- b. **Bonding Requirements.** For construction or facility improvement contracts or subcontracts in excess of the simplified acquisition threshold, the following bonds, or equivalent, are required:
- i. A bid guarantee from each bidder equivalent to 5% 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;
 - ii. A performance bond on the part of the contractor for 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
 - iii. A payment bond on the part of the contractor for 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.

(2 CFR § 200.326.)

D. CONTRACTING WITH SMALL & MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Purchasing Agent must take all necessary affirmative steps to assure that small & minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. These steps must include:

1. Placing qualified small & minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small & 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 & minority businesses and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small & 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 allowed, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

(2 CFR § 200.321.)

E. CONTRACTS ARISING FROM PROCUREMENTS

1. **Contract Administrator.** Prior to the execution of a contract funded by a federal award, the municipality should name a Contract Administrator. The Contract Administrator is responsible for the tasks, technical requirements, service performance, and verification that payments are in compliance with the contract.

2. **Contract Type.** The municipality may use a time-and-materials type contract (i.e., a contract whose cost to the municipality is the sum of (i) the actual cost of materials and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit) only if the municipality determines that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk. The municipality must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. (2 CFR § 200.318(j).)
3. **Contract Provisions.** Any contract entered into between the municipality and a firm or vendor who is to be compensated using a federal award or a portion thereof must contain the applicable contract provisions described in Appendix I. (2 CFR § 200.327.)
4. **Subrecipient and Contractor Determinations.** The municipality must make case-by-case determinations whether each agreement it makes for the disbursement of federal funds casts the party receiving the funds in the role of a subrecipient or a contractor. The municipality must make this classification using its judgment based on the following factors, as well as any additional guidance supplied by the federal awarding agency:
 - a. **Contractors.** A contract is for the purpose of obtaining goods and services for the party's own use and creates a procurement relationship with the contractor. (See 2 CFR § 200.1.) Characteristics indicative of a procurement relationship between the municipality and a contractor are when the contractor (i) provides the goods and services within normal business operations; (ii) provides similar goods or services to many different purchasers; (iii) normally operates in a competitive environment; (iv) provides goods or services that are ancillary to the operation of the federal program; and (v) is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.
 - b. **Subrecipients.** A subaward is for the purpose of carrying out a portion of a federal award and creates a federal assistance relationship with the subrecipient. (See 2 CFR § 200.1.) Characteristics which support the classification of a party receiving federal funds as a subrecipient include when the party (i) determines who is eligible to receive what federal assistance; (ii) has its performance measured in relation to whether objectives of a federal program were met; (iii) has responsibility for programmatic decision making; (iv) is responsible for adherence to applicable federal program requirements specified in the federal award; and (v) in accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

If the party receiving the funds is classified as a subrecipient, the municipality must:

- i. Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information required by 2 CFR § 200.331.
- ii. Evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described below, which may include consideration of such factors as: (a) the subrecipient's prior experience with the same or similar subawards; (b) the result of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements—of 2 CFR Part 200, and the extent to which the same or similar subaward has been audited as a major program; (c) whether the subrecipient has new personnel or new or substantially changed systems; and (d) the extent and results of federal awarding agency monitoring.

- iii. Consider imposing specific subaward conditions upon a subrecipient as described in 2 CFR § 200.208.
- iv. Monitor the activities of the subrecipient as necessary, and as further provided in 2 CFR § 331, to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.
- v. Verify that each subrecipient is audited as required by Subpart F (Audit Requirements) of 2 CFR Part 200 when it is expected that the subrecipient's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501.
- vi. Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the municipality's own records.
- vii. Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR § 200.338.

(2 CFR §§ 200.330, 200.331.)

F. RECORDS

1. **Recordkeeping.** The municipality must maintain records sufficient to detail the history of procurement. Records must include the following: (i) rationale for the method of procurement, (ii) selection of contract type, (iii) contract selection or rejection, and (iv) the basis for the contract price.
2. **Record Retention Requirements.** The municipality must maintain records related to each federal procurement for a period of three 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 municipality in the case of a subrecipient. The following exceptions apply:
 - 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 municipality 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 3 years after final disposition.
 - d. When records are transferred to or maintained by the federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the municipality.
 - e. Records for program income transactions after the period of performance. In some cases, federal fund 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 municipality'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).

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 3-year retention period for its supporting records starts from the date of such submission.

If the proposal, plan, or other computation is not required to be submitted to the federal government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year covered by the proposal, plan, or other computation.

(2 CFR §§ 200.318(i), 200.333.)

G. PROTESTS AND CLAIMS

The municipality is solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements of goods or services under federal awards. Except as may be otherwise provided in a written request for proposals or other solicitation of the municipality, these procedures are available to proposers for the purpose of handling and resolving disputes relating to such procurements, including evaluation and selection, protests of awards, disputes, and claims relating to the selection process and contract award.⁴ A protestor must exhaust all of these administrative remedies before pursuing a protest with the federal grant agency or in any court of law. For purposes of this section, the term "proposer" means any person or entity that has submitted a bid or a proposal in response to an RFP or other solicitation to the municipality, or a person or entity that is a prospective bidder or offeror and who has a demonstrated direct economic interest in the results of the procurement.

1. **Protest Submission Requirements.** To be considered by the municipality, a protest must be made in writing, supported by sufficient information to enable the protest to be fairly evaluated, and submitted within the time periods set forth herein. At minimum, protests must include (i) the name, phone number, and address of the protester; (ii) identification of the detailed and specific provision(s) of applicable federal or state law which would be allegedly violated by the procurement; (iii) copies of all exhibits, evidence, or documents supporting the protest; and (iv) a concise description of all remedies or relief requested.
2. **Pre-Award Protests.** Pre-award protests are protests based upon the content of the solicitation documents. Any protest to the terms, conditions, or specifications set forth in a solicitation must be submitted to the Purchasing Agent or the contract administrator, if a contract administrator is identified in the solicitation, within 5 calendar days after the issuance of the solicitation. All such protests will be considered by the Purchasing Agent, or the contract administrator as appropriate, prior to the solicitation due date, and a written decision will be provided to the protestor. A decision of the Purchasing Agent or contract administrator is final, and no further protest or appeal of the terms, conditions, or specifications of any solicitation will be considered by the City.

⁴ These protest procedures are not available to contractors or third parties for the purpose of handling and resolving disputes, claims or litigation arising in the course of contract formation or contract administration. Any such disputes, claims or litigation will be handled and resolved in accordance with applicable contract terms, if any, and applicable law.

3. **Protests of Proposal Evaluations and Award Decision.** Proposers shall be notified of any award decision by a written or oral notice. This notice shall be transmitted to each proposer at the address, email address, or telephone number contained in its proposal. Any proposer whose proposal has not lapsed may protest an award decision on any ground arising from the evaluation of proposals or the award decision, but not on any ground specified in the "Pre-Award Protests" category, above. Any such protest must be submitted to the Purchasing Agent or the contract administrator, if a contract administrator is identified in the solicitation, within 3 calendar days after notice of the award. All such protests will be considered by a Protest Review Subcommittee, composed of members selected by the City in its sole discretion. A written decision from the Protest Review Subcommittee stating the grounds for allowing or denying the protest shall be transmitted to the protestor before a final contract award is made. A decision of the Protest Review Subcommittee is final, and no further protest or appeal will be considered by the City.

(2 CFR § 200.318(k).)

H. FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW

1. The municipality must 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 municipality 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.
2. The municipality must 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. The municipality's procurement procedures or operation fails to comply with the procurement standards in 2 CFR Part 200;
 - b. 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;
 - c. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;
 - d. 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
 - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

The municipality is exempt from the pre-procurement review in this paragraph if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of 2 CFR Part 200.

3. The municipality 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.

4. The municipality 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 municipality that it is complying with these standards. The municipality must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

(2 CFR § 200.325.)

I. EXCEPTIONS TO THESE ADMINISTRATIVE PROCEDURES

The requirements set forth in these administrative procedures do not apply to:

Block grants awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services);

Federal awards to local education agencies under 20 U.S.C. 7702-7703b (portions of the Impact Aid program, including federal payments relating to federal acquisition of school property and federal payments for students residing on military installations or Indian lands);

Federal awards authorized under the Childcare and Development Block Grant Act of 1990, as amended;

Classes of federal awards or non-federal entities identified as exceptions by the Office of Management and Budget; or

Any circumstance where the provisions of federal statutes or regulations differ from the provisions of Part 200 of Title 2 of the Code of Federal Register.

(2 C.F.R. §§ 200.101, 200.102.)

Legal Reference: 2 CFR Part 200 (Uniform Administrative Requirements) (for federal awards made on or after 12/26/2014)

Adopted: _____

Amended: _____

APPENDIX I. REQUIRED CONTRACT PROVISIONS

All contracts made by the municipality for the procurement of property, goods, or services using a federal award must contain provisions covering the following, as applicable:

1. **Remedies (over \$250,000).** Contracts for more than the simplified acquisition threshold (currently \$250,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for such sanctions and penalties as appropriate.
2. **Termination for Cause and Convenience (over \$10,000).** All contracts in excess of \$10,000 must address termination for cause and for convenience by the municipality, including the manner by which it will be affected and the basis for settlement.
3. **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 60-1.360-1.3 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."
4. **Davis-Bacon Act, Copeland "Anti-Kickback" Act (construction contracts over \$2,000).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the municipality 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 municipality 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 municipality 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 municipality must report all suspected or reported violations to the Federal awarding agency.
5. **Contract Work Hours and Safety Standards Act (over \$100,000).** Where applicable, all contracts awarded by the municipality 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.

6. **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.
7. **Clean Air Act; Federal Water Pollution Control Act (over \$150,000).** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires compliance 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).
8. **Debarment and Suspension.** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions 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.
9. **Byrd Anti-Lobbying Amendment (over \$100,000).** Contractors that apply or bid for an award exceeding \$100,000 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.
10. **Domestic Preference.** As appropriate and to the extent consistent with law, the municipality 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 a Federal award. For purposes of this section, “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. For purposes of this section, “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. See 2 CFR § 200.322.

11. **Procurement of Items Made with Recovered Materials.** The contractor 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, Subpart B that contain the highest percentage of recovered materials, as long as the item is available at a reasonable price and within a reasonable time, and a satisfactory level of competition is maintained. This applies when the municipality purchases \$10,000 or more worth of a designated item during a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more. Section 6002 also requires 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. See 2 CFR § 200.323; 40 CFR § 247.2(a)(1).

12. **Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment.** Contractors are prohibited from obligating or expending loan or grant funds to (i) procure or obtain; (ii) extend or renew a contract to procure or obtain; or (iii) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). See 2 CFR § 200.216.