

CITY OF LAWRENCE PROCUREMENT POLICY FOR FEDERAL GRANTS

I. INTRODUCTION

This Procurement Policy for Federal Grants applies to all expenditures of monies received through federal grants, whether those monies come directly from a federal agency or through an intermediary known as a "pass-through entity." While reference may be made from time to time simply to "procurement transactions" this policy applies only to such transactions funded with federal monies.

Federal law imposes particular requirements on the use of federal grants. This Procurement Policy is designed to ensure that the City of Lawrence (the "City") complies with those requirements. Individual federal grants may contain further requirements that are unique to those grants and in addition to the requirements of this policy. Therefore, it is important for grant administrators to work closely with the Controller's Office to ensure compliance with the requirements of each grant.

Failure to comply with federal requirements can result in a variety of adverse consequences, ranging from denial of reimbursement to debarment of the City from all federal funding. In certain circumstances criminal charges may also be brought. Therefore, federal requirements must be observed with utmost diligence. Violation of this policy may result in disciplinary action, including termination of employment.

This policy is consistent with Final Guidance issued by the Federal Office of Management and Budget on December 26, 2013 and effective as of December 26, 2014, as amended and modified.

II. ETHICS AND CONFLICTS OF INTEREST

A. Personnel

All individuals involved in expenditure of federal grant monies must avoid any actual or apparent conflict of interest. Such individuals may not derive any personal financial or other benefit from any contract or transaction using federal grant funds. This prohibition includes parents, children (biological, foster, and/or adopted) and siblings, as such close relationships could give rise to an appearance of conflict. In addition, contractors or consultants who draft bid specifications or requests for proposal on the City's behalf are thereby disqualified from bidding on those opportunities. While such contractors or consultants are not automatically disqualified from other opportunities, care must be taken to ensure that their work for the City does not give them unfair advantage over competitors.

City personnel may not accept kickbacks, "rebates", gratuities or other "gifts" or "tokens of appreciation" from vendors. Rebates and discounts to the City are permitted provided the following is within compliance:

The rebate or discounts comports with all applicable laws;

Result from an arm's-length negotiation, which is fully documented in the file and are consistent with vendors' standard pricing or discounting policies.

Vendors or suppliers who offer inappropriate benefits or rewards to City employees shall immediately be reported to the Board of Public Works and Safety.

Noncompliance with these requirements may result in disciplinary action, including termination of employment.

B. Supplier and Bidders

To avoid conflict or the appearance of conflict, contractors or consultants who prepare specifications, statements of work or other material portions of requests for proposal shall be excluded from bidding on the underlying work. As with natural persons, parent, subsidiary, and affiliated companies must also be excluded.

The City will not accept bids based upon anti-competitive pricing or practices.

III. PROCUREMENT PROCESSES

Federal regulations place great emphasis on securing the best value for each federal dollar and on promoting free and open competition. Consequently, all purchases using federal funds require a cost/price analysis and documentation showing that more than one vendor was considered. The detail of the analysis and required documentation increases with the amount spent. See Section III H., below, for Purchasing Guidelines.

As a general principal, the City is responsible for the efficient and effective administration of federal grants through sound management practices.

The City may not earn or keep any profit resulting from federal monies, unless such is expressly permitted by the terms of the grant.

A. Costs

Costs must be reasonable, allowable, and allocable.

A cost is defined as "reasonable" under the condition that such costs have been evaluated by conducting a thorough price analysis and a review of the current market.

B. Allowable Costs

Duplicative or unnecessary purchases are not "allowable" and are not eligible for reimbursement from federal grant monies.

"Allowable" costs must:

- Be necessary and reasonable for the performance of the federal award and be allocable to that award.
- Conform to any limitations set forth in this policy or in the grant. Consult the grant agreement regarding additional requirements attached to particular grants.
- Be recorded and classified in a consistent treatment. For example, costs that are classified as indirect outside the context of a federal grant may not be classified as direct costs when applied to a federal grant.

- Be determined in accordance with generally accepted accounting principles ("GAAP").
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.
- Be properly documented. Required documentation is detailed in Section III.

Whenever appropriate, the costs of leasing versus purchasing must be considered.

Grant administrators are responsible for ensuring that grant expenditures are accounted for in a complete, timely, and accurate manner.

C. Account Codes

Account codes are used to classify and accurately track expenses and expenditures. Use of account codes is also required by federal law and regulation. Account codes are furnished by the Controller's Office. Grant administrators are responsible for the consistent and accurate use of account codes.

D. Allocable Costs

A cost is "allocable" to the extent that it provides a benefit to the project for which the grant was awarded. If there is no benefit, the expense is not "allocable." If an expense is not "allocable," it is automatically not "allowable" and cannot be paid for from grant funds.

Costs charged to federal grants shall be the actual cost incurred by the City and shall therefore reflect any credits or discounts obtained by the City.

If a cost benefits more than one project, but the proportion of benefit to each cannot be determined because of the interrelationship of those projects, then the cost may be allocated between those projects on any reasonable basis with proper documentation showing how and why the allocation was made.

If a grant specifically authorizes the purchase of equipment or other capital assets, those costs shall be allocated to that grant, regardless of what use is made of such equipment or asset after its original purpose is completed. "Indirect" costs, such as maintenance and depreciation, are discussed in Section III E., below.

In general, costs allocable to one grant may not be charged to any other federal grant to overcome fund deficiencies or any other reason.

When in doubt regarding the justification and distribution of any costs, consult the Controller's Office.

Certain grants may be subject to statutory limits on allowable costs. In those cases, costs that exceed that limit may not be charged to the grant.

Any payments made for costs determined to be unallowable must be returned (with interest) to the granting agency.

E. Indirect (Facilities and Administration) Costs

Indirect (F&A) costs must be classified as "Facilities" or "Administration."

- "Facilities" means depreciation on buildings, equipment, and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses.
- "Administration" means general administration and general expenses such as accounting, personnel, and other indirect costs not defined above as "Facilities" costs.

Indirect costs may be allocated to a grant only if they provide a benefit to that specific grant program.

Individual grants may set forth specific requirements relating to reimbursement of indirect costs, matching, or cost sharing. Please consult the Grant Agreement and Controller's office for additional guidance.

F. Certifications

Federal law requires periodic reports detailing the use of grant monies. These reports, as well as vouchers requesting payment, must be certified in writing by the grant administrator. The required certification reads:

"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)."

****Note that errors, omissions, or falsehoods may result in personal liability, including criminal prosecution****

G. Price

Price analysis is a comparison of prices offered by qualified vendors competing in the open market. Price analysis may be as simple as "comparison shopping" prices for standard goods published by a number of vendors or as complicated as written bids submitted in response to a detailed request for proposal.

H. Purchasing Guidelines

1. Micro Purchases (Less than \$3,000.00 or \$2,000.00 in the case of acquisitions for construction contracts subject to the Davis-Bacon Act).

Purchases under \$3,000.00 are typically standardized goods or services available from many sources. Such purchases do not require competitive bidding or detailed documentation. However, pricing should be obtained from more than one supplier and this research should be documented in the file. Whenever practicable, micro purchases should be distributed equitably among qualified suppliers.

From time to time, the Board of Public Works and Safety may certify a greater threshold for Micro Purchases (but not to exceed \$50,000.00), as provided under 2 CFR 230.320 (a) (I) (iv).

2. Small Purchases - Over \$3,000.00 but less than the "Simplified Acquisition Threshold" (Currently \$150,000.00)

Purchases larger than \$3,000.00, but less than the Simplified Acquisition Threshold, require additional research and documentation. At minimum, written quotations should be obtained from at least two competing sources. All requests for proposals shall identify the City as an Equal Opportunity Employer and require the same certification from suppliers.

Minimum acceptable documentation consists of requests for proposal issued, responses received, and criteria used for final selection. There is no requirement that contracts be awarded solely based on price (i.e., to the lowest bidder). Other considerations, such as vendor's experience in the field or quality of products or services offered, may justify a higher price. Those reasons must be documented in the transaction file.

Consult the Controller's office if special circumstances arise (e.g., only one suitable supplier exists).

3. Procurement by Sealed Bids (formal advertising).

Sealed bids are publicly solicited requests for bids or proposals at a fixed contract price. The contracts are awarded to the bidder whose bid conforms in all material respects to the specified requirements and offers the lowest price. Sealed bids are the preferred method for procuring construction contracts.

Sealed bidding is appropriate in the following circumstance:

- A complete, accurate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- A procurement lends itself to a fixed price contract and the selection of the successful bidder can be made principally based on price.

If sealed bids are used, the following requirements apply:

- The invitation for bids shall be publicly advertised;
- Bids must be solicited from an adequate number of known suppliers, providing them sufficient time to respond;
- The invitation for bids must fully describe the items or services sought so that the bidder may properly respond;
- All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- 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

- Any or all bids maybe rejected if there is a sound, documented reason.

The Board of Public Works and Safety shall establish a written method for conducting technical evaluations of the proposals received and for selecting recipients before the bidding opportunity is announced. Technical specifications shall be provided to the granting or pass-through agency upon request.

4. Sole Source Procurement.

"Sole source" or non-competitive procurement may be used only when one or more of the following circumstances apply:

- The item is available only from a single source;
- Public exigency or emergency will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals; or
- After solicitation of a number of sources, competition is determined to be inadequate.

IV. COMPETITION

All procurement transactions must be conducted in a manner providing full and open competition. Requirements or practices that impede or obstruct such competition are not permitted and may result in disciplinary action, including termination of employment.

Federal grant regulations set aside preferences required by state or local law, *unless* the grant or applicable federal law expressly mandate or encourage observance of such preferences. Federal preemption does not apply to state licensing laws.

To further ensure free and open competition, all solicitations shall:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Features or requirements that unduly restrict competition are not permitted. "Brand name or equivalent" descriptions may be used as a means to define the performance or other noticeable requirements of procurements. The specific features of the named brand to be met by offers must be clearly stated; and
- Identify all requirements and all factors to be used in evaluating bids; and
- Ensure that all prequalified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. No potential bidder shall be barred from submitting during the proposal period.

Specifications or requirements that artificially limit competition are not permitted.

V. GENERAL REQUIREMENTS

The following requirements are applicable to all procurement transactions, regardless of size

- Procurement transactions shall be conducted in a lawful and ethical manner.
- Unnecessary/duplicative purchases are not permitted (and are not reimbursable expenses).
- Grant administrators are responsible to ensure contractor performance in accordance with the applicable contracts or purchase orders.

Whenever possible:

- Consider leasing versus purchasing;
- Enter into agreements to share common goods or services with other governmental entities;
- Use federal excess or surplus property in lieu of new purchases;
- Consider breaking purchases into smaller consignments, or consolidating purchases, if doing so will produce lower pricing or greater value.

In those instances, in which no price competition exists, the supplier's profit shall be negotiated as a separate line item. To establish a fair and reasonable profit, consider the:

- Complexity of the work to be performed;
- Risk borne by the contractor;
- Contractor's investment;
- Amount of subcontracting;
- Contractor's record of past performance;
- Industry profit rates for similar work in the surrounding area.

Construction contracts may not be awarded based on all "cost plus" pricing method. The fee payable under the contract must be expressed in dollars to be paid, and not as a percentage of any cost component. In addition, value engineering should be applied to all construction contracts.

Contracts shall be awarded only to providers of known integrity and ability to fulfill the contract requirements.

Each project leader must maintain records detailing the history of all procurements. At a minimum, these records will disclose the rationale for the:

- Method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and,

- Basis for the contract price.

Time and material contracts may be used only after a determination that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.

The City shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include, at minimum:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to observe the foregoing requirements.

The City shall, to the extent practical under a federal award, provide a preference for the purchase, use, or acquisition of goods, products or materials manufactured in the United States. (See 2 CFR 230.322)

The City and its contractors shall comply with all applicable provisions regarding the acquisition of materials listed at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, when the purchase price exceeds \$10,000.00. (See 2 CFR 230.323)

The City reserves the right to select with whom it transacts business to the extent permissible by law.

Records of all procurement transactions, and all relevant supporting documents, shall be available upon request to the federal granting agency or the pass-through agency responsible for the funds provided to the City.

VI. MANDATORY CONTRACT PROVISIONS

Each grant may require that contracts funded by that grant contain certain provisions that apply only to that grant. To ensure compliance, The City will utilize contract forms for all sub awards and contracts. All agreements supplied by vendors or contractors must be reviewed by Lawrence's Corporation Counsel.

Required terms are discussed here to provide users with a basic understanding of these provisions.

In addition to those provisions set forth below, other contractual provisions, as detailed in the Appendix II to Part 200-Contract Provisions for Nonfederal Entity Contracts may be applicable and required.

A. Remedies

Contracts that exceed the Simplified Acquisition Threshold must provide remedies that protect the City in the event that a contractor fails to perform as required by the contract. These remedies may include sanctions, liquidated, actual, and/or realized damages, or penalties levied upon the contractor.

Contracts that exceed \$10,000 must permit the City to terminate for cause, and for convenience, and must include a mechanism for calculating the amounts due the contractor in the event of such termination.

Contractor must certify that it is an Equal Opportunity Employer.

B. Davis-Bacon Act

The Davis-Bacon Act applies to construction contracts in excess of \$2,000 requiring contractors to pay laborers and mechanics wages not less than the "prevailing" wage, as determined by the Secretary of Labor.

- Each bid solicitation published by The City must contain the current prevailing wage determination.
- Any award of the contract must be conditioned on contractor's acceptance of that wage determination.
- Suspected or reported violations of the Davis-Bacon Act shall be immediately reported to the Federal awarding agency.

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act also applies to construction contracts in excess of \$2,000.00. It prohibits "kickbacks" in construction contracts funded with Federal monies.

- Contractors and subcontractors (sometimes referred to as "sub-recipients") shall be prohibited from inducing 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.
- Suspected or reported violations shall be immediately reported to the federal awarding agency.

D. Construction Contract Work Hours and Safety Standards Act

Construction contracts in excess of \$100,000 shall require that the wages of mechanics or labors comply with Federal law; including:

- Wages of mechanics and laborers shall be computed on the basis of 40 hours of work per week; and,
- Work in excess of forty hours per week shall be paid at a rate at least 1.5 times the basic hourly rate.

In addition, contractors shall be prohibited from requiring laborers or mechanics from working in surroundings or under conditions that are unsanitary, hazardous, or dangerous.

E. Debarment and Suspension

Contracts funded with Federal grant monies may not be awarded to contractors that have been debarred or suspended from receiving federal monies pursuant to the Federal Excluded Parties List System. The City shall verify that a vendor or contractor is not debarred or suspended by either: A) performing searches on federal government databases listing debarred or suspended contractors and vendors; or B) obtaining a certification from the contractor or vendor attesting that the contractor or vendor has not been debarred or suspended at the time the contract for the relevant goods, work or services is executed; or C) including a clause in the applicable contract with the vendor or contractor under which the vendor warrants that it has not been debarred or suspended.

Prior to awarding a contract, proof of compliance with the above must be provided to the Controller's Office and the Board of Public Works and Safety.

VII. CONSTRUCTION CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Unless the granting agency has made a separate determination accepting the City's bonding policy, all contracts for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold shall meet the following requirements:

1. Each bidder shall provide a bid guarantee equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. Successful bidders shall, prior to contract execution, provide a performance bond for 100 percent of the contract price to secure fulfillment of contractor's obligations under such contract.
3. Successful bidders shall also provide, prior to contract execution, a payment bond for 100 percent of the contract price to ensure payment to persons supplying labor and materials under the contract.
4. All bonds shall be issued by reputable and financially sound bonding companies licensed to do business in the State of Indiana.

VIII. MONITORING AND REPORTING PROGRAM PERFORMANCE

Grant administrators are responsible for oversight of activities supported by federal grant monies. grant administrators must monitor activities under federal awards to ensure compliance and performance expectations are being achieved.

Grant administrators are responsible for the timely completion of all required reports. As a general rule, such reports are required at least annually, and no more frequently than quarterly.

Performance reports shall be submitted using federally approved forms and standards. Current federal standards require that reports provide:

- A comparison of actual accomplishments to the objectives of the federal award.
- The reasons why established goals were not met, if appropriate.
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

IX. SIGNIFICANT DEVELOPMENTS

Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the City must inform the federal awarding agency or pass-through entity as soon as the following types of conditions become known:

- Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the federal award. This disclosure must include a statement of the action(s) taken, or contemplated, and any assistance needed to resolve the situation.
- Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

X. RECORD RETENTION AND ACCESS

A. Retention

Financial records, supporting documents, statistical records, and all other records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report. For federal awards that are renewed quarterly or annually, however, records must be maintained from the date of submission of the quarterly or annual financial report, respectively. The only exceptions are the following:

- If any litigation, claim, or audit is begun before the x1. If any litigation, claim, or audit begins before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- The three-year retention period may be extended by notice from the federal granting agency or any other agency having oversight authority.
- Records for real property and equipment acquired with federal funds must be retained for three years after final disposition of that property or equipment.

- The three-year retention requirement does not apply when records are transferred to or maintained by the federal awarding agency or pass-through entity.
- When the grant requires the City to report program income after the period of performance, the retention period starts from the end of the non-federal entity's fiscal year in which the program income is earned.

The following apply to 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:

- 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-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 three-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.

B. Access to Records

Records relating to programs funded with federal monies shall be available to the federal awarding agency, or any other federal oversight agency, upon request. This provision includes timely and reasonable access to City personnel for inquiry related to such records.

Consult the Controller's Office for guidance regarding the appropriate response to any federal request for access.

XI. PROJECT CLOSEOUT

The following timetable applies to all projects funded by federal grants unless:

- The grant itself sets forth another schedule; or,
- The granting agency agrees to extension(s) of this timetable.

The project leader shall submit, no later than 90 calendar days after the project end date, all financial, performance, and other reports required by the terms of the grant.

All obligations under the grant shall be liquidated within 90 days of the project end date.

Any funds advanced by the granting agency that were not spent in performance of the grant project shall be refunded to the granting agency.

The grant administrator shall account for the disposition of any real or personal property acquired with federal funds or received from the Federal government as part of the grant project.

The closeout of a federal award does not affect the right of the awarding agency to disallow costs and recover funds through audit or other review.

XII. CONSEQUENCES OF NONCOMPLIANCE

Noncompliance can result in a variety of adverse consequences for the City, including:

- Temporary withholding of payments pending correction of the deficiency.
- Disallowance of all or part of the cost of the activity or action not in compliance.
- Complete or partial suspension of the Federal grant.
- Suspension or debarment of the City from participation in federally funded programs.
- Withholding of further Federal funding.
- Suit to recover funds paid for non-compliant activity.
- Criminal prosecution.

Noncompliance with this policy can have a variety of adverse consequences for the City, including loss of access to federal funding; therefore, failure to comply with these policies and procedures may result in disciplinary action, including termination of employment.

In addition, violation of federal requirements may expose an individual to civil and criminal prosecution.