


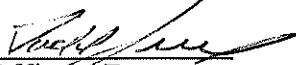
**CITY OF BEAUMONT  
POLICIES AND PROCEDURES MANUAL**

Policy Number: 7.3

Subject: Purchasing Procedures

Effective Date: 7-12-22

Approved by: Chris Boone /   
Interim City Manager / Date

Todd Simoneaux /   
Chief Financial Officer / Date

**I. PURPOSE**

The purpose of this policy is to define the functions, responsibilities, and inter-departmental relations to the City's procurement practices.

- A. The policy of the City of Beaumont is to assure good control and coordination of City-wide procurement, reporting capabilities for management, equitable treatment of vendors and service providers, and adherence to Federal, State, and local law applicable to municipal procurement. This policy will be achieved through a centralized purchasing system realizing that there are circumstances where certain procurement activities are better handled within a project organization or a project site, while remaining under appropriate centralized management control through the establishment of agreed upon policies and procedures.
- B. There are also other circumstances when certain specialized procurement activities may be handled separately by departments other than Purchasing. However, these activities should be under the general policy guidance of this directive unless otherwise exempted. References to Purchasing apply equally as well to special purchasing activities unless otherwise stated.

**II. OBJECTIVES**

The policies and procedures are to assist City personnel by defining general and specific management decisions as included in, but not limited to the following:

- 1. to define procurement authority, activities, and procedures;
- 2. to clarify inter-departmental responsibilities and relations;
- 3. to develop improved policies and procedures through ongoing review and update;
- 4. to assist in supervision;
- 5. to standardize and communicate approved practices;
- 6. to promote understanding, cooperation, and a sense of equitable treatment among suppliers;

7. to assist in training and personnel development;
8. to maintain efficient management practices.

### III. DEFINITIONS

- A. Activity Statement - The monthly activity statement is provided to the procurement card user to reconcile transactions.
- B. Blanket Purchase Order - Refers to an unspecified request for supplies, usually for contracted services and supplies.
- C. Budget Authorization - The budget is the document through which appropriations for various expenditures are authorized to departments by the City Council.
- D. City Council Authorization - Any purchase in excess of \$50,000 must have Council approval before the goods or services are ordered, except in cases of emergency. In cases of an emergency, (threat to public health or in cases where the Mayor declares a state of emergency) the Council will be advised of the purchase as quickly as possible.
- E. Commitment Authorization - Refers to those individuals who have been delegated the authority from the City Manager to commit the City for materials, equipment, supplies, and services.
- F. Competitive Sealed Bids and Proposals - As authorized by the State Purchasing Law, Ch. 252 of the Local Government Code.
  1. Competitive Sealed Bids are used in the procurement of goods and services required by the City. Quotations are solicited by issuing notice by mail, facsimile, newspaper advertisement or internet posting. Public notice requirement shall remain consistent with current guidelines listed in Section 252.041 of the Local Government Code.
  2. Competitive Sealed Proposals - The competitive sealed proposal procedure, also called a Request for Proposal (RFP), is used in the procurement of high technology acquisitions and other purchases that will obtain the best value. Competitive Sealed Proposals shall specify relative importance of price and other factors, with the award of contract being made to the responsible bidder whose proposal is determined to be most advantageous to the City, taking into consideration all evaluation factors set forth in the Competitive Sealed Proposal. All quotations shall be solicited through the Competitive Sealed Proposal. Public notice for Competitive Sealed Proposals shall be made in the same manner as applicable formal bidding requirements. This section shall not apply to procurement exempted from competitive bidding as defined by State law.
- G. Contractual Agreement - Refers to any contract for purchase of goods or services.

- H. Federally Debarred and Excluded Parties-Before expending federal and state funds, the debarment status of the vendor must be verified using the Excluded Parties List System (EPLS) <https://sam.gov/content/exclusions>. (Refer to Federal Debarred and Excluded Parties Policy, Policy 7.12.)
- I. Formal bids - Written bids are solicited for expenditures of more than \$50,000 requiring public notice for a minimum of fourteen (14) days prior to bid opening.
- J. Informal bids - Written bids for expenditures less than \$50,000. Informal bids may be received by facsimile or mail.
- K. Insurance Requirements - Before any individual or company can enter into a contract for performance of a specified service for the City of Beaumont, proof of commercial general liability insurance and workers' compensation insurance, in the amount specified, must be provided prior to commencement of the work. There shall be no exceptions to this requirement except in a state of emergency.
- L. Local Bidder Preferences – Under Local Government Code, Sections 271.905(a) and 271.9051, the City may consider a vendor's place of business in awarding certain contracts competitively bid. (Refer to Local Bidder Preference Policy, Policy 7.14.)
- M. Procurement Card - The procurement card is used to purchase items needed in the work environment with a value of \$500 or less.
- N. Purchasing - The process through which materials, supplies, and services are obtained for the operation of the organization.
- O. Purchase Order - The document used to initiate and control purchases.
- P. Receipt - No Invoice - The receipt of goods or services electronically. Receipt of goods and services is by item only.
- Q. Requisition Entry - Purchase Requisitions are entered directly into the computer system by an authorized department/division representative.
- R. Vendor Favoritism - Favorable treatment toward a vendor can mean, for example, improper advance notice of a request for bids, obtaining normally unavailable information, and obtaining normally unavailable information, being allowed to submit bids after a deadline, and obtaining acceptance for substandard goods.

#### IV. RESPONSIBILITIES

- A. City Council must authorize all purchase of supplies, materials, and goods in excess of \$50,000 except in an emergency.
- B. The Purchasing Manager has responsibility for the procurement of all goods and services, and to either provide the service for such procurement and processing or give functional directions to others delegated the authority to perform such services.

- C. Purchasing has the responsibility for obligating the City and for making the final determination of sources of supply, quantities purchased, delivery schedule, and price negotiations, except where others are so authorized. The decisions will be made in conjunction with operational and staff departments, as appropriate.
- D. Purchasing is to serve as the exclusive channel through which all requests regarding prices and products are handled. Purchasing will conduct all correspondence with suppliers involving prices or quotations. In cases where technical details are necessary, the using department may correspond with suppliers. In such cases, the Purchasing Staff should be provided with copies of all such correspondence. Close communication and coordination between Purchasing and the using departments is essential in obtaining the best product or service at the lowest cost to the City.
- E. All negotiations are to be handled by the appropriate Purchasing division personnel within their delegated authority.
- F. When supplier representatives make personal sales calls to a department without special invitation, they are to be directed to the appropriate Buyer in the Purchasing Division.
- G. No employee engaging in the purchasing activities shall accept anything of material value from any vendor or potential vendor. Discretion shall be practiced to avoid any perception of the possibility of vendor favoritism or competitive advantage.
- H. No officer or employee of the City shall have a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the City, or be financially interested directly or indirectly in the sale to the City of any land, materials, supplies, or services except on behalf of the City as an officer or employee, provided, however, that the provisions of this Section shall only be applicable when the stock owned by the officer or employee exceeds one percent (1%) of the total capital stock of the corporation. Any willful violation of this section shall constitute malfeasance in office and any officer or employee guilty thereof shall thereby forfeit the office or position. Any violation of this section with the knowledge expressed or implied of the person or corporation contracting with the governing body of the City shall render the contract voidable by the City Council. (City Charter, Article XVII, Section 9)
- I. Purchasing is responsible for ensuring competition whenever possible by soliciting at least three (3) price quotations for both informal (\$5,000 to \$50,000) and formal bids (over \$50,000). These quotes must be documented and available to Management unless an exception as defined by Local Government Code, Chapter 252.022 exists.
- J. Historically Underutilized Business (HUB) - Before an expenditure of more than \$3,000 and less than \$50,000 can be made, at least two (2) disadvantaged businesses shall be contacted. Businesses must be registered with the City of Beaumont as a Minority Business Enterprise.

- K. The department director or his/her designee must originate all purchases of goods and services with a computer-generated requisition, approved electronically by a designated division manager or department director.
- L. The Purchasing Manager has responsibility for maintaining a uniform set of procedures and forms to expedite the bidding process. This shall include mechanisms for vendor notification, bid analysis and summary, bidder mailing list applications, competitive invitations, instructions to bidders, policy statement of bid award, sealed bid envelopes, and advertising procedures consistent with Federal, State, and local requirements.
- M. The City Council or their designee shall have power to reject all bids and advertise again.
- N. The City Manager or his/her designee shall assure that City improvement contracts exceeding \$25,000 be awarded to the lowest, responsible bidder meeting specifications after such public notice and competition as prescribed by State law. Alterations or change orders may be made and approved by the City Manager, provided such alterations or change orders do not increase the cost to the City more than ten percent (10%) of the original amounts. Any single change in excess of \$10,000 shall be approved by the City Council.
- O. The City Manager or his/her designee is responsible to assure that all commitments to a vendor or service provider are stated in writing by purchase order, contract, or letter with appropriate terms, and signed by one of the following:
  - 1. City Manager;
  - 2. Chief Financial Officer;
  - 3. Purchasing Manager or his/her designee.
- P. Any employee of the City of Beaumont who makes a written or verbal commitment to purchase material, equipment, or services for the City and is not authorized under one of the above categories is subject to disciplinary action, legal action, and personal liability.

V. PROCEDURES/RULES

- A. Requisition Entry - All requisitions are entered directly into the computer system for all goods and services. Sufficient information relative to items, quantity, and price are required. Required fields for completion of requisition are delivery date, name of the requisition entry clerk, reason for purchase, and ship to location.
- B. First Level Approval - Once the requisition order has been entered, it is forwarded electronically to first level approval for review and authorization. The individual approving this level should be a Department Director or his/her designee, i.e. Division Manager, Supervisor, etc.

After approval at first level, the requisition is forwarded to buyer processing unless the expenditure is over \$5,000; funding is not available in the account designated

(there is no budget or account is over budget); the expenditure is in excess of \$10,000; or the expenditure will be posted to an account in one of the various grant funds. Should any of these occur, the requisition is forwarded to second level, third level or fourth level approval for review and authorization.

- C. Second Level Approval – In the System, this level is called “REQ 2<sup>ND</sup> LEVEL OF FUNDS”. This level is for requisitions that are over \$5,000. This level should be approved by a Department Director or his/her designee. At NO TIME should the same person, other than a Department Director, approve first and second level.
- D. Third Level Approval – In the System, this level is called “APP OVR BUDGT/OVR \$10,000”. This level is for expenditures that are in excess of \$10,000 or being posted to an account that is over budget at that time or does not have a budget. Only the Chief Financial Officer and other designated Finance staff can approve at this level. Upon approval at first or second level, if a requisition meets this criteria, the Finance Staff will be sent an email notification by the System to alert them that a requisition needs approval.
- E. Fourth Level Approval – In the System, this level is called “GRANT# (with the grant fund number designated)”. This level is for expenditures that will be posted to account numbers within funds that account for the City’s federal and state grants, such as Fund 231 Miscellaneous Grants, Fund 241 Police Grants, Fund 258 Health Grants, Fund 264 CDBG Grants, etc. Only Chief Financial Officer and other designated Finance staff can approve at this level. Upon approval at first, second, or third level, if a requisition meets the criteria of each, the Grants Staff will be sent an email notification by the System to alert them that a requisition needs approval.
- F. Buyer Processing - After first level and/or second level, third level, and fourth level approval, as described above, the requisition is sent to Buyer Processing for bid solicitation.
- G. Purchase Order - The Purchasing Division generates a Purchase Order from the entered requisition. The vendor, after receiving the Purchase Order, ships the goods with a packing or delivery slip. The invoice will be sent directly to the City's Accounts Payable office.
- H. Blanket Purchase Order - A type of purchase order used by departments that purchase a variety of items on a frequent basis from the same vendor. Blanket orders are to be used primarily for goods or services that are under contract.
- I. Received-No Invoice - The receiving department acknowledges the receipt of goods electronically by indicating the number of items received. This acknowledgment authorizes the Accounts Payable Division to pay for the items received at the price

stated on the purchase order. Users must be authorized to the account number stated on the purchase order.

- J. Procurement Card - The procurement card may be used by departments to purchase items with a value of \$500 or less. The procurement card is for business purposes only and may not be used for personal or travel transactions. Cards are issued to individuals for purchases needed in the field. (Refer to specific Procurement Card Procedures, Policy 7.4.)
- K. Sam's Club Card- The Sam's Club card may be used by departments to purchase items with a value of \$500 or less. The Sam's Club card is for business purposes only and may not be used for personal transactions. Cards are issued to individuals for purchases needed in the field. (Refer to specific Sam's Card Procedures, Policy 7.11.)

VI. **PROCUREMENT WITH FEDERAL AWARDS / FUNDS UNDER FEDERAL PROCUREMENT STANDARDS**

In order for the City to be in compliance with Federal Procurement Standards under 2 C.F.R. 200, the following subsections apply to the City's purchases and procurements using Federal Awards and/or Funds:

A. **§200.318 General Procurement Standards**

1. The City shall use its own documented procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
2. The City shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. The City shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, awards and administration of contracts. No employee, officer, or agent of the City must participate in the selection or award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employees or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the City must neither solicit nor accept

gratuities, favors or anything of monetary value from contractors or parties to subcontracts. However, the City may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

- a. If the City has a parent, affiliate or subsidiary organization that is not a State, local government or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. – “Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the City is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.”
4. The City’s procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out 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.
  5. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the City shall consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
  6. The City shall consider using Federal excess and surplus property in lieu of purchasing new equipment and property wherever such use is feasible and reduces project costs.
  7. The City shall consider using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
  8. The City shall award contract only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.



9. The City shall maintain record 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.
10. The City may use a time and material type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to the City is the sum of:
  - a. The actual cost of materials; and
  - b. Direct labor hours charged at fixed hourly rate that reflect wages, general and administrative expenses, and profit.
  - c. Since the formula generates an open-ended contract price, a time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the City awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
11. The City alone shall be responsible, in accordance with good administrative practice and sound business judgement, 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 judgement 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.

**B. §200.319 COMPETITION**

1. All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section. 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 must 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 procurements, and;
  - g. Any arbitrary action in the procurement process.
2. The City shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local or tribal 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.
3. The City shall adhere to the following procedures for procurement transactions. All solicitations shall:
- a. 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; and
  - b. 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; and

- c. The City shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
4. The City shall ensure 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. Also, the City shall not preclude potential bidders from qualifying during the solicitation period.

**C. §200.320 METHODS OF PROCUREMENT TO BE FOLLOWED**

The City shall use one of the following methods of procurement:

1. Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$5,000<sup>a</sup>, except as otherwise discussed in the Federal Acquisition Regulations subpart 2.1. To the extent practicable, the City shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting quotations if the City considers the price to be reasonable.
2. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (currently \$150,000.00). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
3. Procurement by sealed bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with 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 conditions in paragraph (3) (a) of this section apply.
  - a. In order for sealed bidding to be feasible, the following conditions should be present:
    - (1) A complete, adequate, and realistic specification or purchase description is available;
    - (2) Two or more responsible bidders are willing and able to compete effectively for the business; and

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<sup>a</sup> Under 2 C.F.R. § 200.320(A), the aggregate dollar amount threshold for micro-purchases for acquisition of supplies or services is \$10,000.00. However, the City's standard threshold for these purchases is \$5,000.00, so the more restrictive amount is referenced for consistency in the purchasing policy.

- (3) 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.
- b. If sealed bids are used, the following requirements apply:
- (1) 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, for local, and tribal governments, the invitation for bids must be publicly advertised;
  - (2) 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;
  - (3) All bids will be opened at the time and place described in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
  - (4) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs 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
  - (5) Any or all bids may be rejected if there is a sound documented reason.
4. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
- a. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - b. Proposals shall be solicited from an adequate number of qualified sources;

- c. The city shall have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
  - d. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
  - e. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other typed of services though A/E firms are a potential source to perform the proposed effort.
5. 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 item is available only from a single source;
  - b. The public exigency (not an emergency but requires immediate action) or emergency (threats to health, life or safety) for the requirement will not permit a delay resulting from competitive solicitation. Once the documented exigency or emergency period ends, the City must transition to a full and openly awarded contract;
  - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
  - d. After solicitation of a number of sources, competition is determined inadequate.

**D. §200.321 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

- 1. 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.
- 2. 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 (SBA) and the Minority Business Development Agency of the Department of Commerce (DOC); 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.

**E. §200.322 PROCUREMENT OF RECOVERED MATERIALS**

1. 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 during 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.

**F. §200.323 CONTRACT COST AND PRICE**

1. The City shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the City must make independent estimates before receiving bids or proposals.

2. The City shall negotiate a profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration 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.
3. Costs or priced based on estimated costs for contract 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 non-Federal entity under Subpart E – Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

**G. §200.324 FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW**

1. 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.
2. The City shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bid, or independent cost estimates when:
  - a. The City's 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 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.
3. The City is exempt from the pre-procurement review in paragraph 2 of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards under 2 C.F.R. pt. 200 and 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 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.

#### **H. §200.325 BONDING REQUIREMENTS**

- 1. For construction or facility improvement projects, contracts or subcontracts beneath the Simplified Acquisition Threshold, the City must follow its own bonding policy and requirements.
- 2. For construction or facility improvement projects, contracts or subcontracts exceeding the Simplified Acquisition Threshold, 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 had not been made, the minimum requirements must be as follows:
  - a. A bid guarantee from each bidder equivalent to five percent (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.

- b. A performance bond on the part of the contractor for one hundred 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.
- c. A payment bond on the part of the contractor for one hundred 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.

**I. §200.326 CONTRACT PROVISIONS**

1. The City’s contracts must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-Federal Contracts Under Federal Awards, found at 2 C.F.R. 326.

**J. SUSPENSION AND DEBARMENT**

1. The City and its contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s (DHS’s) regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
2. These regulations restrict awards, subawards and contract with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the System for Award Management (SAM) Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM Exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2. It is the City’s responsibility to check that list prior to the award of a contract. The City’s policy will be to check this list before issuing any payment on a contract.

3. In general, an excluded party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a covered transaction, which is any non-procurement transaction (unless excepted) at either a primary or secondary tier. Although covered transactions do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipients. Specifically, a covered transaction includes the following contracts for goods or services:
  - a. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000;
  - b. The contract requires the approval of the Federal awarding agency, regardless of the amount;
  - c. The contract is for Federally-required audit services; or
  - d. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of the Federal awarding agency or is in excess of \$25,000.

## **Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity 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 non-Federal entity 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 governmentwide 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.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - 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.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

### **§ 200.323 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 during 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.

### **§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) 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).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

## **§ 200.471 Telecommunication costs and video surveillance costs.**

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

[85 FR 49570, Aug. 13, 2020]

## **§ 200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity 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:

(1) “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.

(2) “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.