



## Administrative Policies and Procedures

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| Policy Title: | Procurement Standards for Federally Funded Contracts | Policy Number: | 207     |
| Effective:    | 6/24   |                |         |
| Supersedes:   | 10/16  |                |         |
| Approval:     | <i>Milton Dohoney Jr.</i>                            | Page           | 1 of 10 |

### 1. Purpose

To define the procurement standards by which the City purchases materials, supplies, equipment, and contractual services funded by Federal awards.

### 2. Policy

The City of Ann Arbor is committed to securing the best products, repairs and services available for the purposes intended in the most efficient and economical manner while following all applicable federal standards and requirements.

Uniform administrative requirements, cost principles, and audit requirements for Federal Awards to non-Federal entities have been established (2 C.F.R. §200.100(a)(1) and (b)). The terms and conditions of Federal Awards, including the conditions in Part 200, flow down to subawards to subrecipients unless a particular section of the federal regulations or the terms and conditions of the Federal Award specifically state otherwise. The City must comply with these requirements when it is a recipient or subrecipient of a Federal Award. It is possible for the City to concurrently receive Federal Awards as a recipient, subrecipient and a contractor, depending on the substance of its agreements with the Federal Awarding agencies and pass-through agencies.

**WHERE THE PROVISIONS OF THE FEDERAL STATUTES OR REGULATIONS (WITH THE EXCEPTION OF AUDIT REQUIREMENTS) DIFFER FROM THE PROVISIONS IN APP# 207 or APP# 209, THE PROVISIONS OF THE FEDERAL STATUTES OR REGULATIONS GOVERN. SERVICE AREA/UNITS ARE STRONGLY ENCOURAGED TO DIRECTLY REVIEW AND DETERMINE APPLICABILITY WITH EACH SPECIFIC AGENCY MAKING THE AWARD TO THE CITY WHERE APPLICABLE.**

The City Service Area/Unit administering and/or using the Federal Award will be responsible for adherence to and compliance documentation, when required by these Federal requirements.

### 3. Definitions

#### 3.1 C.F.R. - Code of Federal Regulations

3.2 Federal Award - Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity either as a grant or loan.

3.3 Grant Agreement - a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity. Grant Agreement is distinguished from a Cooperative Agreement in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal Award.

3.4 Micro-purchase – a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1. The threshold is periodically adjusted for inflation.

3.5 – Non-Federal Entity – a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal Award as a recipient or subrecipient. For purposes of this policy, Non-Federal Entity is the City of Ann Arbor

3.6 Value Engineering – a systematic and creative analysis of a contract item or task to ensure that its essential function is provided at the overall lower cost.

### 4. Policy Implementation

4.1 Applicable Administrative Policy: In addition to the requirements outlined in this policy, the requirements in APP #204, Purchase of Goods and Services, apply to all City purchases regardless of funding source, with the exception of Section 4.4 in APP #204. Additional administrative policies may apply to the purchase dependent on the type of purchase. If a Service Area/Unit is unsure of whether a particular administrative policy applies, it should contact the City Purchasing Manager.

4.2 Conflicts of Interest; Federally-Funded Contracts - No employee, officer or agent of the City shall participate in the selection of, or in the award or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

4.2.1 Each awarding agency must establish conflict of interest policies for its Federal Awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal Awarding agency policy. Conflict of Interest policies are not uniform across all Federal Awarding agencies. The applicable conflict of interest policy for the specific Federal Awarding agency should be reviewed by the using Service Area/Unit prior to and be part of the terms of the release of any bid or RFP or if a non-bid purchase using grant funds, the contract terms.

As illustrative and not as the only manner in which a conflict could occur, a conflict would arise when: (i) the employee, officer or agent, (ii) any member of his or her immediate family, (iii) his or her partner, or (iv) an organization that employs, or is about to employ, any of the foregoing, has a financial or other interest in the firm amount that is both less than \$250.00 and less than 5% of the public cost of the contract, the contract shall not be precluded.

4.2.2 It is a prohibited conflict of interest for any officer, employee or agent of the City will solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to contracts with the City. Note that although de minimus (i.e. \$50 or less) unsolicited gifts may be accepted under federal grant regulations, it is prohibited under City Human Resource Policy 2.1 and 2.3 for employees to accept gifts or gratuities from visitors, vendors or salespersons except as stated in H R. Policy 2.3, subsection 3.2. All employees of the City are obliged to refrain from actions which might result in or create the appearance of a conflict of interest.

#### 4.2.3. Violations

4.2.3.1 Employees: If a City employee willfully violates any of the provisions of this policy may be subject to appropriate discipline.

4.2.3.2 Officers If the Mayor, a Councilmember, the City Administrator or the City Attorney willfully violates any of the provisions of this policy, he or she shall be referred to the Council Administrative Committee for appropriate discipline or other action.

4.2.3.3. Contractors: If a contractor or agent of a contractor of the City who willfully violates of any of the provisions of this policy may be cause for disqualification of the contractor, termination of contracts with the contractor or other action.

4.3 Federal Grant-Funded Purchases – Under the Federal Uniform Grant Guidance, the Office of Management and Budget issued Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. 2. CFR Part 200.317 to 200.327 list specific procurement standards that must be followed, if applicable, to each federally funded grant. In addition, when receiving funds or administering projects funded in whole or in part by a Federal Agency, funding thresholds (which vary dependent on the Federal Agency) may impose additional compliance requirements authorized by section of C.F.R. other than 2. CFR Part 200. All applicable requirements for federal grants must be followed.

4.3.1 General Procurement Standards The City procurement policy for Federally Funded Contracts must conform to applicable Federal law and the standards identified in 2 C.F.R. Part 200.317 to 200.327. Where there is a conflict between APP #204 and 2 C.F.R. Part 200.317 to 200.327, the federal regulation controls. At minimum all procurements funded by federal awards shall comply with this provision.

4.3.1.1 Maintain responsibility for monitoring (if the City is administering the contract) the project and ensuring project compliance by contracts

4.3.1.1.1 Contract awards must only be awarded to responsible contractors with the ability to perform successfully under the terms and conditions. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

4.3.1.2 Maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts;

4.3.1.3 Avoid purchases of unnecessary or duplicative items;

4.3.1.4 Enter into state and local intergovernmental agreements or inter-service area arrangements where appropriate for procurement or use of common or shared goods and services;

4.3.1.5 Use of Federal excess and surplus property in lieu of purchasing new equipment whenever such use is feasible and reduces project costs;

4.3.1.6 Use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions;

4.3.1.7 Maintain records sufficient to detail the history of the procurement including the rationale for the method of procurement, selection of the contract type, contractor selection or rejection, and the basis for the contract price and State and City record requirements or grant requirements, whichever more stringent.

4.3.2 The City is solely responsible for good administrative practice and for the settlement of any contractual and administrative issues arising from a procurement.

4.3.3 Competition- All procurement transactions must be conducted in a manner providing full and open competition.

4.3.3.1 Contractors that develop or draft specifications, statements of work, and invitations for bids are excluded from competing for those procurements.

4.3.3.2 Specifications, Statements of Work and Invitations for Bids may not include requirements for unnecessary experience, excessive bonding or “brand name” only specifications (unless performance or other relevant requirements can not be met by “an equal” product).

4.3.3.3 Time and materials contracts as the method of procurement may be used only after a determination that no other contract is suitable if the contract includes a ceiling price that the contractor exceeds at its own risk.

4.3.3.4 Noncompetitive procurement may only be used when allowed under the terms of the Federal grant and only after a determination that competitive procurement is not viable. The using Service Area/Unit will be required to document the decision-making process used.

4.3.3.5 State or local geographical preferences in the evaluation of bids or proposals may only be used in cases when applicable Federal statutes expressly allow for its use.

4.3.3.6 Any prequalified lists maintained by the City must be current and include enough qualified sources and must not preclude potential vendors from qualifying. (e.g. mandatory meetings are not permitted).

4.3.3.7 The City must ensure all solicitations incorporate clear and accurate description of the technical specifications and requirements.

4.3.3.8 The City must ensure that all requirements the bidders/responders must fulfill are clearly identified

4.3.4 Methods of Procurement to be Followed. The Federal government has identified the following methods of procurement:

4.3.4.1 Micro-purchases – The City may use this purchasing method in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost

4.3.4.1.1 Micro-purchases are subject to a dollar amount threshold which is periodically adjusted for inflation (See definition above). . Currently, it is \$10,000 (\$2,000 in the case of construction subject to the Davis-Bacon Act).

4.3.4.1.2 Micro-purchases are subject to APP#204 small purchase procedures (i.e. purchases \$5,000 or less). In addition, to APP#204 requirements, the Service Area/Unit should try to distribute such purchases equitably among qualified suppliers.

4.3.4.2. Small purchases – Currently, the Federal government considers purchases \$250,000 or less small purchases and require quotations only. Notwithstanding this federal dollar amount threshold, Service Area/Units must comply with all City Code and APP#204 requirements for purchases in excess of \$5,000 up to \$25,000, including all applicable administrative or Council required approvals.

4.3.4.3. Sealed Bids – Currently, the Federal government requires sealed bids for purchases in excess of \$250,000. (These are primarily for construction projects or goods where price is a major

factor.) Notwithstanding this federal dollar amount threshold, Service Area/Units must comply with all City Code and APP #204 requirements for purchases in excess of \$25,000, including all applicable administrative or Council required approvals. The sealed bid must have the following conditions met:

- a. A complete, adequate, and realistic description of the specifications and purchase;
- b. Two or more responsible bidders who are willing and able to compete;
- c. The procurement leads to a firm fixed price contract where the successful bidder can be chosen mainly on price.
- d. The Invitation to Bid must be publicly advertised and bids must be solicited from an adequate number of suppliers giving them sufficient response time prior to the date of bid opening;
- e. The Invitation to Bid must include any specifications and attachments clearly defining what the bidder must do to adequately respond;
- f. All bids will be publicly opened at the time and place outlined in the bid;
- g. A contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is the lowest; and,
- h. Any or all bids may be rejected if there is a sound, documented reason.

4.3.4.4 Request for Proposals – A Request for Proposal may be used whenever a Service Area/Unit does not have certain specifications but has a desired outcome. For Federally Funded project, a Request for Proposals must have the following conditions met:

- a. Request for Proposals must be publicized and identify all evaluation factors and their relative importance. Any response received must be considered to the maximum extent possible.
- b. Proposals must be solicited from an adequate number of qualified sources.
- c. The City must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- d. Contracts must be awarded to the responsible firm whose proposal is advantageous to the Federal program with price and other factors considered.

- e. For the procurement of architectural or engineering professional services, price does not have to be used as a selection factor. The competitors' qualifications are evaluated and the most qualified consultant should be selected, subject to negotiation of fair and reasonable competition.

4.3.4.5 Sole Source –Where competitive bidding is not required by Chapter 14 of the City Code or APP #204, sole sourcing of goods or services may be considered only if the purchase can also meet the following conditions:

- a. The item is only available from a single source.
- b. Public emergency will not permit a delay caused by competitive bids.
- c. The Federal Awarding agency or pass-through entity expressly allows a noncompetitive proposal in response to a written request from the City.
- d. After solicitation from a number of sources, competition is deemed inadequate.

4.3.4.5.1 Sole Source purchases that meet all of the conditions in Section 4.3.4.5 may also be required to additional documentation, approvals or record keeping requirements to satisfy federal procurement or audit requirements under the terms of their specific Federal Award. Grant terms should be reviewed before a sole source purchase is made.

4.3.4.6. Service Area/Unit may be required to perform a cost or price analysis for every procurement action in excess of \$250,000, including independent estimates in connection with its selected method of procurement.

4.3.5 Contracting with small and minority-owned businesses, women-owned business enterprises, and labor surplus area firms (collectively Disadvantaged Business Enterprises (DBEs) -The City must take all necessary affirmative steps to assure that DBEs are used when possible. The steps include:



- (2) Assuring DBEs are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into smaller tasks to permit maximum participation.
- (4) Establishing delivery schedules where the requirement permits, which encourage participation.
- (5) Using the services and assistance of the Small Business Administration or the Minority Business Development Agency of the Department of Commerce.
- (6) Requiring the prime contractor, if subcontractors are to be hired, to take affirmative steps (1) through (5) above.

#### 4.3.6 Domestic Preferences for Procurements

4.3.6.1 The City must take all necessary affirmative steps to 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.

4.3.6.2 Infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

#### 4.3.7 Procurement of Recovered Materials

4.3.7.1 Recovered Materials may be required as a part of the technical specification for compliance with Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. §6962), as amended, including procuring only items designated in guidelines of the EPA at 40 CFR Part 247 that contains the highest percentage of recovered materials practicable and consistent with maintaining a satisfactory level of competition.

4.3.7.2 The City may decide not to procure such items if they are not reasonable available, fail to meet performance standards or are only available at an unreasonable price.

#### 4.3.8 Pre-Procurement Federal Awarding Agency or Pass-through Entity Review Procedures

4.3.8.1 Make available the technical specifications to be used in the solicitation document prior to solicitation upon request by the Federal Awarding agency or pass-through entity.

4.3.8.2 Make available procurement documents upon request by

- the Federal Awarding agency or pass-through entities, when:
- a. procurement procedures or operations fails to comply
  - b. the procurement is over \$250,000 and to be awarded without competition or only one bid or offer is received.
  - c. the procurement is over \$250,000 and a “brand name” product is specified
  - d. the procurement is over \$250,000 and awarded to other than the apparent low bidder

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Policy Title: Procurement Standards for Federal Grants

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Page 10 of 10

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- e. a proposed contract change alters the scope or value over \$250,000

The pre-procurement review may be exempted by the Federal Awarding agency or pass-through entity.

4.3.8 Bonding Requirements: For construction of public improvements the following minimum requirements apply .

- a. Bid Bond for 5% of the bid price
- b. Performance Bond for 100% of the contract price
- c. Payment Bond for 100% of the contract price.

4.3.9 Contract Provisions: The City’s contract for the purchase of goods or services funded by a Federal Award must contain all Appendices, Assurances and other provisions required under the grant

## 5. Procedures

5.1 In addition to the procedures outlined in APP #204, *Purchase of Goods and Services*, the administrative procedures and documentation required by APP #508, *Grant Accounting and Administration* must also be completed.