

RESOLUTION NO. R-2020-51

A RESOLUTION ADOPTING A FEDERALLY FUNDED PROCUREMENT POLICY

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, the federal Office of Management and Budget (OMB) issued the "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," commonly referred to as "Uniform Guidance" and codified at 2 CFR § 200, to streamline and consolidate government requirements for receiving and using federal grant awards; and

WHEREAS, the Uniform Guidance prescribes procurement standards codified at 2 CFR §§ 200.317 through 200.326, which non-Federal entities must follow when procuring property and services under a Federal award; and

WHEREAS, to receive Federal awards and to comply with the OMB's procurement standards, the City must adopt a Federally-Funded Procurement Policy containing the required provisions prescribed by the Uniform Guidance.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois as follows:

SECTION 1: The foregoing recitals are hereby incorporated into this Section One as if said recitals were fully set forth herein.

SECTION 2: The Federally Funded Procurement Policy, which is attached hereto as **Exhibit A** and incorporated into this Resolution R-2020-51 by reference as if fully set forth herein, is hereby adopted.

ADOPTED this 15th day of June 2020.

Mayor



ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilwoman Robbins
Councilman Rutledge
Councilman Zaruba
Councilman Barbier
Councilwoman Bray-Parker
Councilwoman Fitch
Mayor Suess

Nays: None

Absent: None

Motion Carried Unanimously

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CITY OF WHEATON
FEDERALLY FUNDED PROCUREMENT POLICY

A. Purpose and Applicability:

This Federally Funded Procurement Policy ("Policy") applies to the procurement of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in whole or in part by: (a) Federal financial assistance provided directly from a Federal Awarding Agency or indirectly from a Pass-through Entity as a grant award, or (b) a cost-reimbursement contract under the Federal Acquisition Regulations provided directly from a Federal Awarding Agency or indirectly from a Pass-through Entity, as described in § 200.101 Applicability (hereinafter, "Federally Funded Procurement(s)"). The purpose of this Policy is to ensure compliance with all applicable Federal Procurement Requirements for Federally-Funded Procurements only. To the extent that any provisions of this Policy are inconsistent with any other City regulations, the provisions of this Policy shall prevail with respect to Federally-Funded Procurements. If any provisions of this Policy become inconsistent with Federal requirements, whether due to a change in Federal law or regulations, through judicial precedent, or for any other reason, the City shall not be required to comply with the inconsistent provision. The procedures and requirements contained in this Policy are administrative and may be changed by the City's Procurement Officer as necessary to comply with state and Federal law or other lawful City procurements not involving Federally Funded Procurements.

B. Definitions

Federal Awarding Agency – The Federal agency that provides a Federal award directly to the City.

Federally-Funded Procurement - The procurement of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in whole or in part by: (a) Federal financial assistance provided directly from a Federal Awarding Agency or indirectly from a Pass-through Entity as a grant award, or (b) a cost-reimbursement contract under the Federal Acquisition Regulations provided directly from a Federal Awarding Agency or indirectly from a Pass-through Entity, as described in § 200.101 Applicability.

Federal Procurement Requirements - The post Federal award procurement requirements set forth in CFR §§ 200.317 – 200.326, as may be amended from time to time, which apply to Federally funded procurements, and any additional Federal requirements that apply to a particular Federally funded procurement.

Pass-through Entity – The non-Federal entity, including but not limited to the Illinois Emergency Management Agency, that provides a subaward to the City as a subrecipient to carry out part of a Federal program.

Non-Federal Entity – The City.

Simplified Acquisition Threshold - The dollar amount below which the City, as a non-Federal entity, may purchase property or services subject to the Federal Procurement Requirements

using small purchase methods, as set forth in 2 CFR § 200.88, as it may be amended from time to time.

Subaward – An award provided by a pass-through-entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity.

Subrecipient – A non-Federal entity that receives a subaward from a pass-through-entity to carry out part of a Federal program.

Value Engineering - A systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.

C. Standards of Conduct and General Purchasing Guidelines

(1) Fair competition and Standards of Behavior

All purchasing functions shall be conducted impartially to assure fair and open competition for City business by responsible vendors. (See 2 CFR § 200.319.) In addition, City employees should conduct themselves--and the purchasing process--in a professional manner that will promote equal opportunity and foster public confidence in the procurement process. City employees will treat all vendors equally and fairly, with equal information given to each vendor who participates in the procurement process. City employees will ensure that all prequalified lists of persons, firms, or products used in acquiring goods or services are current and include enough qualified sources to ensure maximum open and free competition. City employees may not place unreasonable restrictions on competition, including any of the following restrictions:

- (a) Placing unreasonable requirements on vendors to qualify for the procurement;
- (b) Requiring unnecessary experience and excessive bonding;
- (c) Noncompetitive pricing practices between vendors or affiliates;
- (d) Noncompetitive contracts to consultants that are on retainer contracts;
- (e) Organizational conflicts of interest;
- (f) Non-compliance with sole source restrictions, and "or equal" requirements;
- (g) Precluding potential bidders from qualifying during the solicitation period; and
- (h) Any arbitrary action in the procurement process.

(2) Conflicts of Interest

No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest.

- (a) A conflict of interest includes any circumstances under which the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of those parties, has a financial interest in or a tangible personal benefit from a vendor considered for a contract. No officer, employee, or agent of the City may solicit or accept gratuities, favors, or

anything of monetary value from vendors or parties to subcontracts. Disciplinary actions will apply to any violation of these conflict of interest standards, in accordance with City policy, and/or, as applicable, a collective bargaining agreement, employment contract, or contract for services. (See 2 CFR § 200.318(c)(1).)

- (b) City employees may not accept gifts, rebates, kickbacks, personal services, or in any way incur personal gain from a vendor, or potential vendor, doing business with the City or otherwise violate laws pertaining to conflicts of interest, political contributions, or unlawful activities.
- (c) A vendor that develops or drafts specifications, requirements, statement of work, invitation for bids, request for qualifications, or request for proposals for a procurement must be excluded from competing for that procurement. (See 2 CFR § 200.319(a).)

D. General Federal Requirements and Recommendations

(1) City, State, and Federal Purchasing Requirements

Federally-Funded Procurements must comply with the City's written purchasing procedures, the State of Illinois procurement standards for municipalities set forth at 65 ILCS 5/8-9-2, the Illinois Local Government Professional Services Selection Act, 50 ILCS 510/0.01 *et seq.*, and the Federal Procurement Requirements set forth at 2 CFR §§ 200.317 through 200.326. In the event of any conflict between City, State or Federal procurement requirements, the most stringent requirement must be used. (See, 2 CFR § 200.318).

(2) Required Contract Provisions

Pursuant to 2 CFR § 200.326, contracts for Federally-Funded Procurements must contain the applicable provisions described in Appendix II to Part 200, Contract Provisions for non-Federal Entity Contracts Under Federal Awards. Contracts over \$10,000 must address the City's termination for cause and for convenience, including the manner for effectuating termination and the basis for any final payment to the terminated vendor. In addition, contracts for Federally-Funded Procurements that exceed the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies for vendor violation or breach of contract terms, and provide for sanctions and penalties, as appropriate.

(3) Department of Homeland Security Standard Terms and Conditions

Federally-Funded Procurements, including procurements eligible for FEMA funding, may be subject to the currently applicable Department of Homeland Security Standard Terms and Conditions, which can be accessed at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

(4) Solid Waste Disposal Act

Federally-Funded Procurements must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 USC § 6962), as further specified in 2 CFR § 200.322.

(5) **Economical Approach**

All procurements must be undertaken in a manner that will avoid acquisition of unnecessary or duplicative items, which may include consideration of consolidating or breaking out procurements, lease alternatives, and other appropriate analysis to determine the most economical approach, subject to the limits of applicable law, including prohibitions against bid-splitting. (See 2 CFR 200.318(d).)

(6) **Oversight**

Each department must maintain oversight over its procurements to ensure that vendors perform in accordance with the terms, conditions, and specifications of the contracts or purchase orders. (See 2 CFR § 200.318(b).)

(7) **Intergovernmental Agreements**

Use of intergovernmental agreements is encouraged where appropriate. (See 2 CFR § 200.318(e).)

(8) **Excess or Surplus Property**

When it will reduce project costs and is feasible, use of Federal excess and surplus property is encouraged over purchasing new. (See 2 CFR § 200.318(f).)

(9) **Value Engineering**

For larger Federally-funded construction projects, a provision for value engineering may be added to the construction contract, subject to prior authorization from the City Manager. A value engineering provision must include a clear procedure for submission, approval, and cost-sharing of savings. (See 2 CFR § 200.318(g).)

(10) **Record Keeping**

The City Procurement Officer is responsible for maintaining records for each procurement of goods or services and document the history of the procurement, including (a) records of the rationale for procurement method, (b) selection of contract type, (c) contractor selection or rejection, and (d) the basis for the contract price. (See 2 CFR § 200.318(i).) At the conclusion of a contract, the original contract and any bids, specifications, and other pertinent data shall be retained by the City Clerk for the period specified by the applicable State and/or City record retention schedule.

(11) **Time and Materials Contracts**

A time and materials contract may not be used for a Federally-Funded Procurement, unless the Procurement Officer has determined that no other type of contract is suitable for the procurement, and provided the procurement complies with 2 CFR § 200.318(j). Similarly, a "cost plus" contract may not be used, as further specified in 2 CFR § 200.323.

(12) **Dispute Resolution**

Any and all protests, disputes, claims, and the like, arising from a procurement will be addressed promptly in accordance with good administrative practice and sound business judgment, and in compliance with all applicable legal or contractual requirements. (See 2 CFR § 200.318(k).)

(13) Local Preference

Except when contracting for architectural and engineering services, local geographic preferences shall not be imposed unless mandated or encouraged by Federal law. (See, 2 CFR § 200.319(b).)

(14) Specifications and Requirements

All procurement solicitations should incorporate a clear and accurate description of the technical requirements or functions of the goods or services to be procured. However, such descriptions should not be drafted to unduly restrict competition among qualified vendors. (See 2 CFR § 200.319(c).) The description of the technical requirements 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. (See, 2 CFR § 200.319(c)(1).) The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. (See, 2 CFR § 200.319(c)(2).)

(15) Cost/Price Analysis

For Federally-Funded Procurements in excess of the currently applicable Simplified Acquisition Threshold, including contract modifications, a cost or price analysis must be performed, and must include making independent estimates before receiving bids or proposals. (See 2 CFR § 200.323.) Costs or prices based on estimated costs for Federally-funded contracts are allowable only as provided in 2 CFR § 200.323.

(16) Profit Negotiation

For a Federal contract awarded without price competition, profit must be negotiated as a separate element of price. To establish fair and reasonable profit, consideration must be given to the complexity of the work, the contractor's risk, the contractor's investment, the amount of subcontracting, record of past performance, and industry profit rates in the surrounding geographical area for similar work, as further specified in 2 CFR § 200.323(b).

(17) Estimated Costs

Costs or prices on estimated costs for contracts under the Federal award shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under 2 CFR §§ 200.400 through 200.475--Cost Principles. The City may reference its own cost principles to the extent that they comply with the Federal Cost Principles. (See, 2 CFR § 200.323(c).)

(18) Federal Awarding Agency or Pass-Through Entity Review

The City must make available, upon request of the Federal Awarding Agency or Pass-through Entity, technical specifications on proposed procurements, procurement documents, such as requests for proposals or invitations for bids, and/or independent cost estimates, in accordance with the requirements of 2 CFR § 200.324.

E. Federal Contractor Requirements

(1) Responsible Contractors

Contracts will only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed Federally-Funded Procurement, with consideration given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources, suspension and debarment. (See CFR § 200.318(h).) A contractor must also be "responsible" as determined under the City's purchasing procedures.

(2) Small and Minority Businesses, Women's Business Enterprises, Labor Surplus Area Firms

The City will take all necessary affirmative steps, including those identified in 2 CFR § 200.321(b), to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible for contracts subject to the Federal Procurement Requirements. The bid documents or RFP must require the vendor to take all necessary affirmative steps pursuant to 2 CFR § 200.321(b), when procuring subcontractors, to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

F. Federal Methods of Procurement

Depending on the type and amount of goods or services, the City will use one of the below methods for procurements subject to the Federal Procurement Requirements, consistent with 2 CFR § 200.320.

(1) Micro-Purchases

The City may acquire supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold in 2 CFR § 200.67. A micro-purchase contract may be awarded without soliciting competitive quotes provided the price is reasonable, unless otherwise specified under the City's procurement procedures. To the extent practicable, the City will distribute micro-purchases equitably among qualified suppliers. (See 2 CFR § 200.320(a).)

(2) Small Purchase Procedures

The City may use simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold in 2 CFR § 200.88. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (See 2 CFR § 200.320(b).)

(3) Sealed Bids (Formal Advertising)

The City may publicly solicit sealed bids to be opened in public and award a fixed price contract to the lowest responsible bidder, in the manner required for formal bidding as specified in compliance with 2 CFR § 200.320(c) and the City's responsible bidder procurement procedures.

(4) Competitive Proposals

The City may use this method when the conditions for use of sealed bids is not appropriate and more than one source submits an offer following a request for proposal. If the City uses

this method, it must comply with the requirements of 2 CFR § 200.320(d), in addition to any other applicable City or State requirements.

(5) Noncompetitive Proposals

The City may solicit a proposal from only one source when: (a) the item is available only from a single source, (b) the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, (c) the Federal Awarding agency or Pass-through Entity expressly authorizes noncompetitive proposals in response to a written request from the City, or (d) competition is determined to be inadequate after solicitation of a number of sources. The Federally- Funded Procurement must comply with the provisions set forth in 2 CFR § 200.320(f).

G. Bonding Requirements

The minimum bonding requirements for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold are as follows:

(1) Bid Guarantee

A bid guarantee must be obtained from each bidder in an amount no less than 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 required within the time specified. (See, 2 CFR §325(a).)

(2) Performance Bond

A performance bond on the part of the contractor must be obtained for no less than 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. (See, 2 CFR §325(b).)

(3) Payment Bond

A payment bond on the part of the contractor must be obtained for no less than 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. (See, 2 CFR §325(c).)

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