



D. CONTRACT MANAGEMENT

Finance Department
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Town of Lyons Contract Management

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D.CONTRACT MANAGEMENT

The Town has in place contract templates for professional services and construction. These contracts must be used for purchase agreements and are attached to this section. Master contracts are located on the Town shared drive, Contracts folder.

1. Contracting and contracts

Contracts are used to secure goods and/or services based on provisions agreed during the selection process.

- 1) The Town and the selected contractor agree on costs and scope of work by entering into a contract.
- 2) The Town requires the use of its contract templates.
- 3) Contracts must include a termination clause and must be written for specified period of time.
- 4) Contracts must include a not-to-exceed clause.
- 5) Edits to the contract templates are managed by the Finance Department. Current versions are located in the shared drive (Contracts folder). It is expected that contracts will include additional information specific to the contract work including as appropriate: scope of work, special conditions and specifications, and appropriate compensation methodology. Staff members responsible for the contract shall plan adequate time for discussions with the Town Attorney regarding all such additional terms and the necessary time to draft such terms.
- 6) Contract signing authority is with the Town Administrator and Town Board as outlined in the Lyons Municipal Code and these procedures.
- 7) Each project should have an employee designated as a project manager to oversee projects and ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts.
- 8) Vendor generated contracts must be reviewed by the Town Attorney.

2. BID/ RFP Award Process

The Town's Purchasing Policy and Procedures, Section A, Table 3, includes tables that outline the difference between goods and services solicitation and construction solicitation.

Contracts are approved by the Town Administrator or Town Board according amounts of the contract and corresponding approval authority (see Tables 1 and 2). All contracts not included in the Board-approved Town budget must be approved by the Board of Trustees.

Documentation for the award includes the following:

- requesting department
- bid/ RFP number or title
- opening date / closing date
- number of bidders or proposers

- evaluation team
- list of bids or proposals – bid tab
- recommendation by evaluation team and reason
- an overview of the project scope
- budget allocations for the work

The recommendation to award and additional information shall be sent to the Town Board for their approval. The Town Board reserves the right to reject any or all bids/ proposals and to accept any portion of bid/ proposal if deemed in the best interest of the Town.

After the award, the project manager will notify all bidders by email of the decision of the Board. The Town will return the bid bonds of the unsuccessful bidders, if applicable, and the successful bidder must enter into a contract, if applicable, within ten (10) working days of the notice of award unless stated otherwise in the bid/ RFP. Failure to do so may result in the loss of the bid security.

After the contract is signed by the Town Board, the Project Manager will initiate the requisition for purchase.

Table 1: Contract Authority for Goods, Supplies & Services

GOODS, SUPPLIES, SERVICES

| | AUTHORIZATION & APPROVAL | | Approve, sign & terminate contracts; Administrator can approve contracts for budgeted purchases of $\leq \$5,000$ |
|------------------------|--------------------------|-------------|--|
| | TOWN ADMINISTRATOR | BOARD | |
| CONTRACTS | $\leq \$5,000$ | $> \$5,000$ | |
| CONTRACT MODIFICATIONS | $\leq \$2,500$ | $> \$2,500$ | Contract amendment |

Table 2: Contract Authority for Construction

CONSTRUCTION PROJECTS

| | AUTHORIZATION & APPROVAL | | Approve, sign & terminate contracts; must include bid tabs to the Board; Administrator can approve contracts for budgeted purchases of $\leq \$20,000$ |
|---------------|--------------------------|--------------|---|
| | TOWN ADMINISTRATOR | BOARD | |
| CONTRACTS | $\leq \$20,000$ | $> \$20,000$ | |
| CHANGE ORDERS | $\leq \$10,000$ | $> \$10,000$ | Contract amendment & modifications |

3. Contract Types

The Town shall use firm fixed-price contracts with a not-to-exceed clause. Lump sum or unit price may be used with contracts.

With grant funds, the Town will not use cost plus a percentage of cost and percentage of construction cost methods of contracting with federal grant-funded projects. A time and materials contract may be considered only after a determination that no other contract type is suitable and if the contract includes a not-to-exceed amount in which the contractor bears the risk for additional costs. Firm fixed-price contracts are the preferred contract type.

4. Contract provision requirements

- a) Administrative, contractual or legal remedies
- b) Termination for cause and for convenience
- c) Equal Employment Opportunity
- d) Davis Bacon Act (as applicable)
- e) Copeland Anti-Kickback Act
- f) Contact Work Hours and Safety Standards Act
- g) Clean Air Act
- h) Federal Water Pollution Control Act
- i) Debarment and suspension
- j) Byrd Anti-Lobbying Amendment
- k) Rights to inventions made under this contract (as applicable)
- l) Energy efficiency

[2 CFR 200.236, Appendix to Part 200]

Specific language for each of these provisions follows.

When using federal and state grant funds, these provisions as appropriate must be included in the contract between the Town and the contractor; and the same provisions must be included in subcontractor agreements. Specific federal agencies may require different or additional contract clauses.

- a) Administrative, contractual or legal remedies

Contract exceeding the current federal government Simplified Acquisition Threshold 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) Termination for cause and for convenience

All contracts in excess of \$10,000 must address termination for cause and for convenience by the Town including the manner by which it will be effected and the basis for settlement.

c) Equal Employment Opportunity

All contracts that meet the definition of “federally assisted construction contract” must include an EEO clause as defined in 41 CFR 60 1.4(b).

The Town agrees that it will incorporate into any contract for construction work, or modifications which are paid for in whole or in part with federal funds, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative steps to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be

canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Town agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the Town is participating as a local government, then equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Town agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and sub-contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Town further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the Town agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

d) Davis Bacon Act (as applicable)

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the Town must include a provision for compliance with the Davis-Bacon Act as supplemented by Department of Labor regulations (29 CFR Part 5). 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 Town 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 Town 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.

e) Copeland Anti-Kickback Act

(40 U.S.C. 3145) This act provides that each contractor or sub-recipient 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 Town must report all suspected or reported violations to the federal awarding agency.

f) Contact Work Hours and Safety Standards Act

(40 U.S.C. 3701–3708) As applicable, all contracts awarded by the Town in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance of this regulation. 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 one-half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. This is applicable to construction work and provides 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.

g) Clean Air Act

(42 U.S.C. 7401–7671q.) Contracts that exceed \$150,000 must contain a provision that requires the Town to agree to comply with all applicable standards, orders or regulations issued pursuant to this act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

h) Federal Water Pollution Control Act

(33 U.S.C. 1251–1387) Contracts that exceed \$150,000 must contain a provision that requires the Town to agree to comply with all applicable standards, orders or regulations issued pursuant to this act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- i) Debarment and suspension (SAM.gov) – includes sub-contractors

(Executive Orders 12549 and 12689) A contract award must not be made to vendors listed on the government wide Excluded Parties List System in the System for Award Management (SAM).

- j) Byrd Anti-Lobbying Amendment

(31 U.S.C. 1352) Contractors that apply or bid for an award of \$100,000 or more must file the required certification 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. The Town and contractors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

- k) Rights to inventions made under this contract

If the Town contracts with a small business or a nonprofit organization for the performance of experimental, developmental or research work then this provision will apply and the Town must adhere to the regulations of 37 CFR Part 401; and include such provisions in a contract.

- l) Energy efficiency

As applicable with funding grants, there are mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201)

5. Insurance and Bonding

Successful bidders requiring insurance will submit evidence of insurance documents, including certificates of insurance and all related policy endorsements in writing to the attention of the Project Manager. Types and levels of insurance coverage are determined according to the size and scope of the project being bid, a risk assessment performed by the Town, changes to relevant laws, etc. No work shall commence on any Town project until all such proof of insurance has been received by the Town. The Town must be named as an additional insured and ensure that the successful bidder procures all related policy

endorsements. Amount of required insurance must be commensurate with the scope and value of the project, and shall be determined by the Town prior to beginning the project.

Bonding requirements

Minimum bonding requirements are as follows:

- 1) 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.
- 2) 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.
- 3) 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.

6. Blanket purchase agreements

Having contracted vendors that have been properly procured can simplify meeting recurring needs for supplies and services, while leveraging buying power and taking advantage of quantity discounts, saving administrative time, reducing paperwork, and stabilizing a source of supplies and services. Blanket purchase agreements can be especially useful during emergencies when short-term notices are needed.

Departments should evaluate particular categories of goods or services that would be most advantageous from a blanket purchase agreement. This statement of need must be documented.

- Contracts must have a scope of work that is inclusive of the possible uses of the vendor. Too narrow of a scope prohibits the vendor from providing certain services and supplies.
- Vendors must have been procured following the Town procedures
- Blanket purchase agreements must be renewed annually through a contract renewal (amendment or modification)
- Blanket purchase agreements must not exceed five (5) years and can be between one and five years
- Prices are secured for the blanket purchase agreement time frame
- Some factors that may determine the need for blanket purchase agreements include reoccurring need, long lead time items, high volume usage, custom items, indefinite

- delivery and quantity
- Failure for a vendor to perform will eliminate the vendor from the active list
- The Town may have multiple vendors to provide similar supplies or services such as office supplies

7. Permissible Renewals/Extensions.

- (a) Contracts may be extended, renewed or amended to extend or renew without further procurement action or additional approvals only if:
 - (1) The soliciting document contemplated amendment or optional renewal terms; and
 - (2) the contract specifically recognized that renewal or amendment was an option; and
 - (3) approval of the contract was at the level that would be required for the contract adding in the additional compensation payable due to the extension, renewal or amendment; and
 - (4) any additional services or service scope change are reasonably related to the services contracted for in the original contract; and

8. Change orders

- a) A change order is an accepted term for a change of pay item, project limits and/ or duration, as compared to the original contract.
- b) Change orders are legal documents that revise the terms of the original contract between the Town and its contractor.
- c) Staff may authorize change orders that do not exceed budget appropriations, provided that the contract authorizes change orders.
- d) Work should not continue without an approved and fully executed change order.
- e) Fully executed change orders must be submitted to the Finance Department.

Authority for approving change orders follows this policy.

Employees are responsible for monitoring contractors to avoid work stoppage by proactively addressing potential change orders.

9. Cost Analysis

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, the Town shall consider the following.

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the Town or the proper and efficient performance of the Federal award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state and other laws and regulations; and terms and conditions of the Federal award.
- c. Market prices for comparable goods or services for the geographic area.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the Town, its employees, the public at large, and the Federal government.
- e. Whether the Town significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

[2 CFR 200.404]

Price and cost analysis (also known as cost reasonableness) is an Office of Management and Budget ("OMB") requirement and a method for ensuring reasonableness. The Town conducts this through a variety of methods (e.g., historical data, comparisons, multiple responses to RFPs and bids, engineering estimates).

The Town shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold [currently \$150,000], 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 non-Federal entity must make independent estimates before receiving bids or proposals.

Some funding sources will require a cost analysis on smaller amounts, less than \$150,000. Town employees working on grant-funded projects are expected know the particular requirements of the funding agency. Cost analysis may be required on change orders, contract modifications or contract amendments if costs are impacted.

[2 CFR 200.323]

10. Construction Projects - Close Out Process

Construction projects often are accompanied by contracts that outline the following areas:

- a. Withholding payment
- b. Retainage
- c. Liquidated damages

d. Managing bonds

Notice of final settlement and process

- a. A notice of final settlement is required on all construction projects that exceed \$150,000.
- b. C.R.S. § 38-26-107 permits an unpaid subcontractor on a public works project to file a claim with the contracting party prior to final settlement. A contracting party receiving such a claim shall withhold the funds claimed from payment to the contractor until the claim has been paid or withdrawn. Such funds shall not be withheld longer than ninety days following a date fixed for final settlement except as provided in C.R.S. Section 38-26-107.
- c. Town legal counsel should be consulted to ensure that the above terms are included in said contracts and that applicable state law is followed if a claim is filed.

In determining whether an individual is an employee or independent contractor, the Town will consider federal and state laws and regulations, including those established in the United States Internal Revenue Code and the Fair Labor Standards Act, and case law interpreting those laws. The Town shall include in all of its contracts with independent contractors the language specified in the Colorado workers' compensation and unemployment compensation statutes which creates a presumption of independent contractor status pursuant to those statutes, and shall have the independent contractor notarize its signature on such contracts pursuant to those statutes.