



B. GRANT PURCHASES

Finance Department
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Town of Lyons Grant Purchases

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B. GRANT PURCHASES

The federal government provides rules for how all grantees must receive, spend, track and report on federal funds. For disasters and emergencies declared prior to 26 December 2014, the relevant procurement standards are found in 44 C.F.R. § 13.36(a)-(i) (States, local and tribal governments). For disasters and emergencies declared after 26 December 2014, 2 CFR applies for all grantees and subgrantees.

1. Procurement Procedures

The Town shall have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. 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 equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
- b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

[44 CFR 13.36(c)(3)]

2. Debarment and Suspension

The Town shall follow federal regulations that govern debarment and suspension of potential contractors who are ineligible to perform on federally funded projects. In order to ensure federal funds do not flow to excluded parties, the Town checks for excluded parties prior to signing a contract. Names of debarred or suspended parties can be found by searching the System for Award Management (SAM) for exclusion records, active or excluded at: <https://www.sam.gov>.

Vendors working on federally funded projects must have a DUNS# and be registered on SAM.gov.

[2 CFR 180, *OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)*]

3. Solicitation Process

The Town's solicitation procedure allows for a full and open competitive process. The Town uses e-purchasing to reach as many potential vendors as possible. Professional services are awarded to the most qualified consultant/ firm within the budget for the project. For construction projects, the Town will select the most responsible and responsive low bidder whose bid conforms to all the material terms and conditions. An adequate number of responses may vary depending on the funding source.

The time frame for having open solicitation is generally in 14 to 21 days.

All procurement transactions must 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.

[2 CFR 200.319]

Use value-engineering clauses in contracts to offer opportunities for cost reductions. [2 CFR 200.318(f)]. An example of a value engineering clause would be reducing the width of a bridge or using fewer materials to make the project more cost effective.

Valuing Procurement for Purpose of Proper Classification.

- (a) Purchases shall not be artificially divided to circumvent the procurement classification and associated procurement process.
- (b) If numerous items are being purchased from one vendor on a single order, the aggregate price is the determining factor with regard to procurement classification.
- (c) In determining procurement value when purchasing services by contract, the following guidelines shall be used:
 - (1) If services are provided on a lump sum basis, the lump sum amount shall determine the value of the procurement. If lump sum services are compensated on an annual basis (instead of on a one-time basis) the procurement value shall be determined by multiplying the annual lump sum amount by the number of years in the term (not to include optional renewal terms contemplated by the contract).
 - (2) If services are provided on a time and materials basis, the value of the procurement shall be determined by multiplying the annual maximum or not-to-exceed compensation by the number of years in the term (not to include optional renewal terms contemplated by the contract).
 - (3) If a contract is for fees to be retained by a vendor (such as banking agreements) and not actual expenditures of the Town (no additional checks or payments are issued to the vendor), an estimate of the cost to the Town (retained fees) shall provide the basis for procurement value determination. If the estimate is erroneous, actual cost shall be used for determining value at renewal time or when resoliciting for such services.
 - (4) The Finance Department shall have the ultimate authority to determine final procurement value for any contract or other form of purchase agreement.

4. Types of Procurement

The federal government defines types of purchases by amount as described in this Section 4. Note that the Town has in place its own threshold amounts for solicitation types, which Town employees are expected to follow. This information is provided as a requirement when using federal funds.

Micro-purchases: acquisition of supplies or services with the aggregate dollar amount does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act).

To the extent practicable, entities receiving grant funds must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Town considers the price to be reasonable.

Small purchases: do not exceed the federal government's Simplified Acquisition Threshold, which is currently \$150,000, and require an informal procurement process for services, supplies and other property. If a purchase qualifies as a "small purchase," an adequate number of quotes must be obtained from qualified sources.

Sealed bids (formal advertising): are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the most responsive and 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. Using this type of procurement requires the following:

- a) A complete, adequate and realistic specification or purchase description;
- b) Two or more responsible bidders are willing and able to compete effectively for the business; and
- c) 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.

When using sealed bids, the following requirements apply:

- a) The invitation for bids will be publicly advertised and 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;
- b) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to respond properly;
- c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and any or all bids may be rejected if there is a sound documented reason.

Competitive proposals are used with more than one source submitting an offer, and either a fixed-price or cost-reimbursement contract is awarded. It is generally used for professional services and when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply.

- a) Requests for proposals must 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 must be solicited from an adequate number of qualified sources;
- c) The grantee 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 most advantageous to the program, with price and other factors considered; and
- e) The grantee 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 types of services though A/E firms are a potential source to perform the proposed effort.

Noncompetitive proposals: when there is one source and may be used when one or more of the following apply.

- 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 the State as a pass-through entity expressly authorizes noncompetitive proposals in written response to a request; or
- d) After solicitation of a number of sources, competition is determined inadequate.

[2 CFR 200.320]

5. Affirmative Steps

Every effort must be made to contract with small, minority and women business enterprises, and labor surplus area firms by following these 6 steps. If the Town does not meet all 6, justifying the reason must be documented. The Town must take all necessary affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms are used when possible.

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 and the Minority Business Development Agency of the Department of Commerce; and
- f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

[2 CFR 200.321(a)]

6. Contract Types

The Town shall use firm fixed price contracts with a not-to-exceed clause. The Town will not use cost plus a percentage of cost and percentage of construction cost methods of contracting with federal grant funded project. Time and material contracts may be considered only after a determination that no other contract type is suitable and if the contract includes a not-to-exceed in which the contractor is at risk for additional costs. Firm fixed-price contracts are the preferred contract type.

[44 CFR 13.36(f)(4)]

7. Price and Cost Analysis for Cost Reasonableness

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]

8. Contract provision requirements

Administrative, contractual or legal remedies

Termination for cause and for convenience

Equal Employment Opportunity

Davis Bacon Act (as applicable)

Copeland Anti-Kickback Act

Contact Work Hours and Safety Standards Act

Clean Air Act

Federal Water Pollution Control Act

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

Byrd Anti-Lobbying Amendment

Rights to inventions made under this contract (patent provision, as applicable).

The language for each of these is located in the Contracts Management Section.

Town contracts must contain provisions as required by federal agencies.

9. Local preference

The Town supports local businesses; however, when using federal grants that prohibit geographical preference, the Town uses an open and full competitive procurement process. If a federal grant allows or requires a geographical preference such as HUD-CDBG, the Town will ensure that such a preference is included in all solicitation and contract documents, as applicable.

[44 CFR 13.36(c)(2)]

10. Avoiding Unnecessary and Duplicative Purchases

The Town provides for a process to avoid purchase of unnecessary or duplicative items. To accomplish this, the Town considers 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. [2 CFR 200.318(d)]

11. Competition

The Town's purchasing processes are conducted in a manner providing full and open competition. 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 procurement; and
- g) Any arbitrary action in the procurement process.

12. 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.