

RESOLUTION NO. 4159

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, ADOPTING A GRANT PROCUREMENT POLICY FOR ALL FEDERALLY FUNDED PROJECTS AND PURCHASES FOR THE CITY OF DENISON, TEXAS; PROVIDING A SAVINGS AND REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denison, Texas is a Home Rule City operating under the provisions of the State of Texas; and

WHEREAS, the City Council of the City of Denison, Texas (“City Council”) recognizes the need for a federal grant program procurement policy (“Procurement Policy”) to provide for a procurement system of quality and integrity, provide for the fair and equitable treatment of all persons or firms involved in purchasing by the City, and to ensure the supplies and services are procured efficiently, effectively and at the most favorable prices for the City, and promote competition in contracting; and

WHEREAS, the City Council desires to adopt a Procurement Policy that outlines procedures to reflect and conform to applicable state and local laws and federal laws and standards identified in 2 CFR 200.318-327; and

WHEREAS, the City Council has reviewed the Procurement Policy attached hereto as **Exhibit “A”** and incorporated herein, and has determined it appropriate to adopt the procurement policy as set forth; and

WHEREAS, upon consideration, the City Council finds and determines it to be in the best interests of the City to adopt **Exhibit “A”** as the City’s Procurement Policy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS:

Section 1. That the foregoing recitals are hereby adopted and incorporated into this Resolution.

Section 2. That the City Council has reviewed the attached Procurement Policy and hereby adopts the attached Procurement Policy set forth in **Exhibit “A.”**

Section 3. The Procurement Policy shall apply to all procurement actions of the City funded with federal funds. When both federal and non-federal funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary.

Section 4. The City Manager, or their designee, shall be responsible for implementing and enforcing the Procurement Policy.

Section 5. The Procurement Policy shall apply to all departments, divisions and entities of the City of Denison engaged in the procurement of goods, services and construction.

Section 6. All provisions of any resolution in conflict with this Resolution are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending action for violation of the repealed resolution, nor shall the repeal prevent an action from being commenced for any violation if occurring prior to the repeal of the resolution. Any remaining portions of said resolutions shall remain in full force and effect.

Section 7. The Procurement Policy may be amended from time to time by resolution of the City Council.

Section 8. That this Resolution shall take effect immediately upon its passage and approval.

PASSED AND APPROVED this 5th day of August 2024.



ROBERT CRAWLEY, Mayor

ATTEST:



Christine Wallentine, City Clerk



EXHIBIT A
CITY OF DENISON GRANT PROCUREMENT POLICY

City of Denison Grant Procurement Policy



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FEDERAL GRANT PROGRAM PROCUREMENT POLICY

ARTICLE I. PURPOSE AND APPLICATION

Section 1.01 PURPOSE. When appropriate, the City of Denison, Texas (the “City”) requests federal grant monies for projects that benefit its residents. This federal Grant Program Procurement Policy (the “Policy”) serves to outline the City’s procurement policy for all federally funded projects and purchases. The City intends to provide for a procurement system of quality and integrity, provide for the fair and equitable treatment of all persons or firms involved in purchasing by the City, ensure that supplies and services are procured efficiently, effectively, and at the most favorable prices available to the City, and promote competition in contracting. This Policy and the procedures herein reflect and conform to applicable state and local laws and federal laws and standards identified in 2 CFR 200.318-327.

Section 1.02 APPLICATION. This Policy shall apply to all procurement actions of the City funded with federal funds. When both federal and non-federal funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, federal procurement regulations shall be applied to the total project. If funds and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

ARTICLE II. DEFINITIONS

Section 2.01 DEFINITIONS. All capitalized terms used and not otherwise defined shall have the meanings given to them in this Policy and as defined in this section unless a different meaning clearly applies from the context.

“CFR” means Code of Federal Regulations.

“City” means the City of Denison, Texas.

“TxGMS” means the Texas Grant Management Standards.

“Policy” means this Procurement Policy.

ARTICLE III. STANDARDS OF CONDUCT

Section 3.01 CONFLICT OF INTEREST. No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract supported by a federal 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 employs 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. CFR Reference: 2 CFR 200.318(c)(1).

Section 3.02 GRATUITIES, FAVORS, AND ITEMS OF MONETARY VALUE. No employee, officer, or agent of the City may solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. CFR Reference: 2 CFR 200.318(c)(1).

Section 3.03 ORGANIZATIONAL CONFLICT. Organizational conflicts of interest may exist when due to the City's relationship with a subsidiary, affiliated, or parent organization that is a candidate for award of a contract in connection with federally funded activities, the City may be unable or appear to be impartial in conducting a procurement action involving a related organization. In the event of a potential organizational conflict, the potential conflict should be reviewed by the City Administrator or his or her designee to determine whether it is likely that the City would be unable or appear to be unable to be impartial in making the award. If such likelihood exists, this shall not disqualify the related organization; however, the following measures shall be applied:

- (a) The organizational relationship shall be disclosed as part of any notices to potential contractors;
- (b) Any City employees or officials directly involved in the activities of the related organization are excluded from the selection and award process;
- (c) A competitive bid, quote, or other basis of valuation is considered; and
- (d) The governing body has determined that contracting with the related organization is in the best interests of the program involved.

CFR Reference: 2 CFR 200.318(c)(2).

Section 3.04 REPORTING. Any perceived conflict of interest that is detected or suspected by any employee or third party shall be reported to the City Administrator. If the City Administrator is the subject of the perceived conflict of interest, the employee or third party shall report the incident to the President of City Commission and/or City Commissioner. If the President of City Commission and/or Commissioner member is the subject of the perceived conflict of interest, the employee or third party shall report the incident to the City Administrator, who shall report the incident to the City Attorney's office. The City must disclose in writing any potential conflict of interest to the federal award agency or pass-through entity in accordance with the applicable federal awarding agency policy. No reprisals or retaliation shall occur as a result of good faith reports of conflicts of interest. CFR Reference: 2 CFR 200.318(c)(1).

Section 3.05 INVESTIGATION. Investigations based on reports of perceived violations of this policy shall comply with state and federal laws and regulations. No person sharing in the potential conflict of interest being investigated shall be involved in conducting the investigation or reviewing its results. In the event an investigation determines that a violation of this Policy has occurred, the violation shall be reported to the awarding agency in accordance with that agency's policies. CFR Reference: 2 CFR 200.318(c)(1).

Section 3.06 DISCIPLINARY ACTIONS. If an investigation results in a finding that the complaint is factual and constitutes a violation of this Policy, the City shall take corrective action to ensure that such conduct ceases and will not recur. City staff shall document the corrective action taken and, when not prohibited by law, inform the complainant. Violations of this Policy may result in disciplinary action up to and including discharge, fines, and possible imprisonment. Disciplinary

actions shall be consistent with City policies, procedures, applicable collective bargaining agreements, and state and federal laws. CFR Reference: 2 CFR 200.318(c)(1).

ARTICLE IV. PRE-SOLICITATION

Section 4.01 PROCUREMENT OFFICER. Also reference as the Project Lead. For the purposes of implementing this Policy, the City Administrator or his/her designee is the procurement officer. The procurement officer is responsible for procurement of services, supplies, equipment, or construction obtained with federal funds and shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the procurement officer, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. CFR Reference: 2 CFR 200.318(d).

Section 4.02 RECORDS. The City will maintain records sufficient to detail the history of procurement. These records will include but are not 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. To ensure compliance with applicable federal, state, and local regulations and requirements, the PROCUREMENT CHECKLIST attached as **Attachment B** will be utilized for every federal procurement with a copy kept in the procurement file with all applicable documentation as well as incorporated into the project file complete with documentation. CFR Reference: 2 CFR 200.318(i).

Section 4.03 CONTRACTS IN EXCESS OF \$250,000 USING FEDERAL FUNDS. The City will perform cost or pricing analysis in connection with *every* procurement action in excess of the 2024 Simplified Acquisition Threshold (\$250,000), including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. As a starting point, the City will make independent estimates before receiving bids or proposals. The engineer's and/or consultant's cost estimate will meet this requirement for formal sealed bids. This must be a detailed cost breakdown for the overall estimate providing the elements of the total cost, not only the total price. CFR Reference: 2 CFR 200.320.

Section 4.04 RFQ'S AND RFP'S. A cost reasonableness analysis with documentation is required for a RFQ or RFP (competitive negotiations) or any time price competition is not the main evaluation factor. This analysis must be completed before awarding the contract. Cost Analysis is the evaluation of separate elements (e.g., labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirement and ultimately, reasonable. Cost analyses are used when there is no price competition or when price competition is not the only evaluation factor, such as procuring A/E, professional, consulting, or program administrator services. CFR Reference: 2 CFR 200.320.

Section 4.05 SHARED SERVICES AND GOODS. To foster greater economy and efficiency, and in accordance with efforts to promote cost effective use of shared services, the City will explore the feasibility to enter into state and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common goods and services. The City will also explore the use of federal excess and surplus property in lieu of purchasing new equipment and property if feasible and if it reduces project costs. The City will also explore the feasibility of using value engineering (the systematic and creative analysis of each contract item or task to ensure that its

essential function is provided at the overall lower cost) clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. CFR Reference: 2 CFR 200.318(e)(f)(g).

Section 4.06 AFFIRMATIVE STEPS. The City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- (b) Assuring small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- (c) The City will also consider the feasibility of dividing total requirements, when economically feasible, into smaller tasks or quantities so as to permit maximum participation by small and minority businesses, and women's business enterprises.
- (d) Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses.
- (e) The City will also use 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. The City will require of its prime contractors, if subcontracts are to be let, to take the affirmative steps listed above. CFR Reference: 2 CFR 200.321(a)(b)

Section 4.07 SOLID WASTE DISPOSAL ACT. The City will 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 containing 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 by 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. For federally funded solicitations, the requesting City department shall include in the specifications the use of fully or partially recovered (recycled) materials to the greatest extent consistent with reasonable performance standards in accordance with federal regulations. CFR Reference: 2 CFR 200.323

ARTICLE V. SOLICITATION PROCEDURES

Section 5.01 FULL AND OPEN COMPETITION.

- (a) All procurement carried out with federal funds, where the City is a direct party, shall be carried out in a manner that provides maximum full and open competition. Procurement procedures will not restrict or eliminate competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or

invitations for bids or requests for proposals are excluded from competing for such procurements. CFR Reference: 2 CFR 200.319(b)

- (b) The City shall not place unreasonable requirements on firms in order for them to qualify to do business, require unnecessary experience and excessive bonding, or encourage or participate in non-competitive practices among firms or affiliated companies. The City shall remain alert to organizational conflicts which would jeopardize the negotiation process and limit competition. The City shall not award non-competitive consultant retainer contracts except as expressly provided by funding source regulations. The City will not specify only a “brand name” product instead of allowing an “equivalent product” to be offered. A “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features, performance, or other relevant requirements of the named brand which must be met by offerors shall be clearly stated. No arbitrary actions will be undertaken in the procurement process. CFR Reference: 2 CFR 200.319(b)(1-7); 2 CFR 200.319(d)(1)
- (c) The City will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed local geographical preferences as selection criteria in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Notwithstanding this prohibition, the City encourages the employment of City residents for City contracts. This section does not preempt state or local licensing laws. When contracting for A/E services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms given the nature and size of the project to compete for the contract. CFR Reference: 2 CFR 200.319(c)
- (d) All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and, when necessary, the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. CFR Reference: 2 CFR 200.319(d)(1-2)
- (e) The City will engage in a full and open RFQ process to provide the City with a prequalified list of persons, firms, or products that may be utilized for acquiring goods and services. The prequalified list shall be routinely updated and include enough qualified sources to ensure maximum open and free competition for procurement of goods and services among the City’s prequalified list of persons, firms, or products. CFR Reference: 2 CFR 200.319(e)

Section 5.02 METHODS OF PROCUREMENT. Direct procurement by the City shall be made by using one of the following methods depending on the monetary value of service to be procured.

- (a) Micro Purchase Procedures. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which 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, the City will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the City considers the price to be reasonable. CFR Reference: 2 CFR 200.320(a)(1)
- (b) Small Purchase Procedures. Relatively simple, informal procurement procedures will be used where the purchase of materials, services, supplies, equipment, and/or other property will not cost in the aggregate more than \$100,000, except where further limited by state law or local policy. The procurement officer must obtain a minimum of three oral or written price or rate quotations from qualified sources. Documentation on all quotations received (whether oral or written) shall be made a part of the file. Selections shall be made principally on price. Payment shall be made upon delivery or completion. CFR Reference: 2 CFR 200.320(a)(2)
- (c) Procurement by Sealed Bids/Formal Advertising. The City follows its purchasing policy for amounts between \$100,000 and \$200,000. The City follows our Purchasing Policy procedures for procurement of products and improvements, which requires procurements of greater than \$200,000 to be procured by sealed bids. Under this procedure, bids are publicly advertised in accordance with the applicable laws and the City's sealed bid procedures. A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price and that conforms to all the material terms and conditions of the advertisement for bids. CFR Reference: 2 CFR 200.320(b)(1)(ii); City of Denison Purchasing Policy
1. The sealed bid method is the preferred method for procuring construction, ONLY if the following conditions apply.
 - a. There are complete, adequate, and realistic specifications or purchase descriptions.
 - b. There are two or more responsible bidders who are willing and able to compete effectively.
 - c. The procurement can be made on a firm fixed-price contract, made in writing, and selection of the successful bidder can appropriately be made principally on the basis of price 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. CFR Reference: 2 CFR 200.320(b)(1)(i-ii) and 200.320(b)(2)(iv)
 2. The advertisement for bids shall be publicly advertised in the official newspaper of the City for three consecutive weeks. The first publication of the advertisement must be at least twenty-one (21) days before the date of the opening of bids. Bids shall be solicited from an adequate number of known suppliers, providing them

sufficient time prior to the date set for opening the bids. CFR Reference: 2 CFR 200.320(b)(1)(ii);

3. The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items, end products or services needed in order for the bidders to properly respond to the advertisement. CFR Reference: 2 CFR 200.320(b)(1)(ii)(B)
 4. All bids shall be opened publicly at the time and place specified in the advertisement for bids. CFR Reference: 2 CFR 200.320(b)(1)(ii)(C)
 5. Any or all bids may be rejected if there is a sound documented reason. CFR Reference: 2 CFR 200.320(b)(1)(ii)(E)
- (d) Procurement by Competitive Proposals. Request for Proposals (RFP) and Request for Qualifications (RFQ) when the conditions set forth above for the use of sealed bids are not present.
1. Competitive proposals are normally conducted with more than one source submitting an offer, and an award of either a fixed-price or cost-reimbursement type contract. It is generally used when conditions are not appropriate for sealed bids. When competitive proposal is used, the following requirements apply:
 - a. Proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized proposals shall be honored to the maximum extent practical. CFR Reference: 2 CFR 200.320(b)(2)(i)
 - b. Proposals will be solicited from an adequate number of qualified sources; three (3) or more are desired. If less than three (3) are received, document attempts to generate more interest.
 - c. The City will have a written method for conducting technical evaluations of the proposals received and for selecting recipients. CFR Reference: 2 CFR 200.320(b)(2)(ii)
 - d. Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. This shall always include negotiation of price to insure cost reasonableness. CFR Reference: 2 CFR 200.320(b)(iii)
 2. Competitive proposal procedures are used for qualifications-based procurement (RFQ) of A/E professional services, where competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. At the conclusion of successful negotiations, the competitor shall be invited to enter into a contract. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services and the contract *must* clearly establish a cost ceiling which cannot be exceeded without contract modification. It cannot be used to purchase other types of services though A/E firms that are potential sources to perform the proposed effort. CFR Reference: 2 CFR 200.320(b)(2)(iv)

The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price. (Chapter 11 of Title 40)

(e) Noncompetitive Proposals:

1. Procurement through solicitation of a proposal from only one source, only when one or more of the following circumstances apply:
 - a. The acquisition of property or services, the aggregate amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act).
 - b. The item is available only from a single source. CFR Reference: 2 CFR 200.320(c)(2)
 - c. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. CFR Reference: 2 CFR 200.320(c)(3)
 - c. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity. CFR Reference: 2 CFR 200.320(c)(4)
 - d. After solicitation from a number of sources, competition is determined inadequate. CFR Reference: 2 CFR 200.320(c)(5)

**ARTICLE VI.
AWARD**

Section 6.01 AWARDING CONTRACTS. Contracts will only be awarded to responsible, responsive contractors/firms possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such factors as the contractor's/firm's capacity, integrity, compliance with public policy, record of past performance, and financial/technical resources. The contractor's/firm's capacity will not only include consideration of its inherent capabilities but also take into consideration all its existing commercial and governmental business commitments. "Responsible bidder" refers to the character or quality of the bidder – whether it is an entity with which the City is safe doing business. "Responsive bidder" refers to whether or not the bidder has met the required specifications in its bid to the City.

- (a) Any or all bids may be rejected if there is a sound documented reason. Disqualification of a bidder for lack of responsibility will require notice to the bidder and the opportunity for a hearing. Rejection of a bid because of unresponsiveness requires only that bidder be informed of why bid was rejected. [See **Attachment A**] CFR Reference: 2 CFR 200.318(h) and 200.320(b)(1)(ii)(E)
- (b) The City of will implement Executive Orders 12549 and 12689, and 2 CFR part 180, which restricts awards, subawards, and contract with certain parties that are debarred suspended, or otherwise excluded from or ineligible for participation in federal

assistance programs or activities. To ensure compliance the City will verify the intended contractor is not excluded or disqualified by one of the following methods:

1. Checking the System for Award Management Exclusion and printing the resulting page for placement in the procurement file.
2. Collecting a certification from the contractor.
3. Adding a clause or condition to the covered transaction with the contractor. CFR Reference: 2 CFR 180.300 and 2 CFR 200.213

(c) See **Attachment A #2** regarding rejection of offers from debarred contractors.

Section 6.02 CONTRACT PRICING.

- (a) Time and material-type contracts will only be used after determining no other contract is suitable. Time and materials contracts prescribe cost to the City as the sum of 1) actual cost of materials; and 2) direct labor hours charges at fixed hourly rates that reflect wages, general and administrative expenses, and profit. This formula generates an open-ended contract price with no profit incentive for the contractor to control costs or labor efficiency. Therefore, each contract must set a price ceiling where the contractor shall pay any costs beyond that threshold. Frequent oversight actions can help ensure the contractor has efficient methods and effective cost controls. CFR Reference: 2 CFR 200.318(j)(i-ii(2))
- (b) The City will negotiate profit as a separate price element 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 will 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. CFR Reference: 2 CFR 200.324(b)
- (c) Costs or prices based on estimated costs for contracts 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 2 CFR 200 Subpart E Cost Principles. CFR Reference: 2 CFR 200.324(c)
- (d) For sealed bids a firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.
- (e) Cost plus percentage of cost and percentage of construction cost methods of contracting **must not** be used. CFR Reference: 2 CFR 200.324(d).

**ARTICLE VII.
CONTRACT PROVISIONS**

Section 7.01 CONTRACT PROVISIONS. Contracts shall include the following provisions and conditions:

- (a) Contracts for more than the Simplified Acquisition Threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 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. CFR Reference: Appendix II Part 200(A)
- (b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the City including the manner in which it will be affected and the basis for settlement. CFR Reference: Appendix II Part 200(B)
- (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.” Federal assisted construction contract “means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.” CFR Reference: Appendix II to Part 200(C)
- (d) All contracts must 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 City shall report all suspected or reported violations to the federal awarding agency. CFR Reference: Appendix II Part 200(D)
- (e) All prime construction contracts in excess of \$2,000 awarded by the City 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 City shall 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 City shall report all suspected or reported violations to the federal awarding agency. CFR Reference: Appendix II Part 200(D)

- (f) 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. CFR Reference: Appendix II Part 200(E)
- (g) All contracts and subgrants of amounts in excess of \$150,000, shall contain a provision which requires agreement to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), and the Federal Water Pollution Control Act as amended (33 USC 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). CFR Reference: Appendix II Part 200(G)
- (h) A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System 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." The Excluded Parties List System in SAM 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. CFR Reference: Appendix II, Part 200(H)
- (i) Contractors applying or bidding for an award of \$100,000 or more must file the required Byrd Anti-Lobbying Amendment certification and ensure 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 USC 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. CFR Reference: Appendix II, Part 200(I)

- (j) Contracts must contain a clause stating contractors will 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. CFR Reference: 2 CFR 200.323 and Appendix II, Part 200(J)
- (k) Contracts must contain performance requirements: period of performance - including completion date, penalties for non-performance, and liquidated damages. 81 FR 36557; 78 FR 14344 dated 6/7/2024

ARTICLE VIII. CONTRACT ADMINISTRATION

Section 8.01 SYSTEMS. The City shall maintain contract administration systems that ensure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/ firms will be a factor in subsequent contract negotiations and award. Remedial action by the City through legal processes shall be considered in instances of identified significant nonperformance. CFR Reference: 2 CFR 200.318(b).

Section 8.02 SETTLEMENT OF ISSUES. The City will be responsible, in accordance with good administrative practice and sound business judgment, 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 will not relieve the City of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the City's unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction. CFR Reference: 2 CFR 200.318(k).

ARTICLE IX. AWARDING AGENCY REVIEW

Section 9.01 TECHNICAL SPECIFICATIONS. The City will make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure the item and/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. However, if the City desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. CFR Reference: 2 CFR 200.325(a).

Section 9.02 PROCUREMENT DOCUMENTS. The City will make available upon request, for the federal awarding agency or passthrough entity pre-procurement review, procurement documents, such as request for proposals or invitations for bids, 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 (\$250,000) 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 (\$250,000), specifies a "brand name" product;
- (d) The proposed contract is more than the Simplified Acquisition Threshold (\$250,000) 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 (\$250,000). CFR Reference: 2 CFR 200.325(b)

Section 9.03 EXEMPT FROM REVIEW. The City will be exempt from the pre-procurement review in Section 9.02 if the federal awarding agency or pass-through entity determines City procurement systems comply with the standards of this part. CFR Reference: 2 CFR 200.325(c)

- (a) The City has self-certified its procurement system. Self-certification does not limit the federal awarding agency's right to survey the system. The City provided written assurances to the Department of Housing and Urban Development that it complies with procurement standards found in Part 200. The City has cited specific policies, procedures, regulations, or standards as being in compliance with these requirements and has its system available for review. CFR Reference: 2 CFR 200.325 (c)(2).

ARTICLE X. BONDING REQUIREMENTS

Section 10.01 BONDING REQUIREMENTS. Bonding requirements for procurements with federal funds will include the minimum requirements listed below:

- (a) To be submitted with the bidding documents:

A bid guarantee from each bidder, equivalent to five percent of the bid price. The "bid guarantee" shall 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. CFR Reference 2 CFR 200.326(a)
- (b) The bid bond or other security may be enclosed with the other bid documents submitted by a bidder and need not be submitted in a separate envelope attached to the envelope enclosing the other bid documents.
- (c) To be submitted at time of contract award:

A performance bond on the part of the contractor for 100 percent 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. CFR Reference: 2 CFR 200.326(b)

A payment bond on the part of the contractor for 100 percent 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. CFR Reference: 2 CFR 200.326(c)

ARTICLE XI. PROTEST PROCEDURE

Section 11.01 STANDARDIZED PROCEDURES. Standardized procedures will be used to process and resolve disputes relating to procurements.

- (a) Protestors must exhaust all administrative remedies with the City before pursuing with the awarding agency, and the awarding agency shall be notified of all formal protests.
- (b) Reviews of protests by the awarding agency will be limited to: violations of federal law or regulations and the standards of section 2 CFR Part 200, Subpart D. state and local law violations will be investigated by the respective jurisdiction and violations of the City procedures shall be addressed by the City Administrator. Protests received by the federal agency outside their scope will be referred back to the City.
- (c) Any person who is aggrieved in connection with the solicitation or award of a contract shall make a protest to the procurement officer.
 - 1. Protest with respect to a solicitation shall be submitted in writing at least two (2) working days prior to the opening of bids or the closing date for receipt of proposals.
 - 2. Protest with respect to the award of a contract shall be submitted in writing within ten (10) calendar days after the contract award.
 - 3. All protests will be made in accordance with the procedures outlined in **Attachment A**.

ARTICLE XII. CHANGE IN LAW

Section 12.01 CHANGE IN LAW. In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy.

(Remainder of page intentionally left blank.)

ATTACHMENT A – ADDITIONAL PROCEDURES

1. Rejection of Bids and Offers

- a. Any bid or offer that fails to conform to the essential requirements of the invitation for bids (IFB) or request for proposal (RFP) shall be rejected.
- b. Any bid or offer that does not conform to the applicable specifications or requirements shall be rejected unless the IFB or RFP authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the IFB or RFP.
- c. Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the IFB or RFP shall be rejected.
- d. A bid or offer shall be rejected when the bidder/offeror imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the City, since to allow the IFB or RFP to impose such conditions would be prejudicial to other bidders/offerors. For example, bids shall be rejected in which the bidder/offeror
 - i. Protects against future changes in conditions, such as increased costs, if total possible costs to the City cannot be determined;
 - ii. Fails to state a price and indicates that price shall be price in effect at time of delivery;
 - iii. States a price but qualifies it as being subject to price in effect at time of delivery;
 - iv. When not authorized by the IFB or RFP, conditions or qualifies a bid or offer by stipulating that it is to be considered only if, before date of award, the bidder/offeror receives (or does not receive) award under a separate solicitation;
 - v. Requires that the City is to determine that the bidder's/offeror's product meets applicable City specifications; or
 - vi. Limits rights of the City under any contract clause.
- e. Any bid/offer may be rejected if the procurement officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

2. **Debarment** - The City will comply with the provisions of 2 CFR 2424 (government debarment and suspension regulations) by ensuring bids or offers received from any person or concern that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date shall be rejected.

3. Further considerations for sealed bids:

- a. A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance (as distinguished from the form) of the bid, or work an injustice on other bidders. A substance of bid condition affects price, quantity, quality, or delivery of the items offered.
- b. When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids.
- c. Low bids received from concerns determined to be not responsible shall be rejected,
- d. After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid/offer. Accordingly, the procurement officer shall reject the bid unless the transfer is affected by merger, operation of law.

- e. Notification: Any bid or offers that are rejected or otherwise excluded from the competitive range shall be notified promptly in writing by the procurement officer. The notice shall state the basis for the determination and that a proposal revision will not be considered.
 - f. Record Keeping: The originals of all rejected bids/offers, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.
- 4. Solicitation and Award Protest Procedures:** The following procedures are established to resolve agency protests effectively, to build confidence in the City's procurement system, and to reduce protests outside of the City:
- a. Protests shall be concise and logically presented to facilitate review by the City. Failure to substantially comply with policy requirements may be grounds for protest dismissal.
 - b. Protests shall include the following information:
 - i. Name, address, and telephone number (fax if applicable) of the protester.
 - ii. Solicitation or contract number.
 - iii. Detailed statement of legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
 - iv. Copies of relevant documents.
 - v. Request for a ruling by [city, town, county, organization].
 - vi. Statement as to the form of relief requested.
 - vii. All information establishing the protester as an interested party for the purpose of filing a protest.
 - viii. All information establishing the timeliness of the protest.
 - c. All protests filed directly with the City will be addressed to the procurement officer or other official designated to receive protests.
 - d. Interested parties may request an independent review of their protest as an appeal of the procurement officer's decision on a protest. The City shall designate the official(s) who are to conduct this independent review.
 - e. Protests based on alleged improprieties in a solicitation shall be filed two (2) working days before the advertised opening of sealed bid or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than ten (10) calendar days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the City's procurement system, may consider the merits of any protest which is not timely filed.
- 5. Action upon receipt of protest:**
- a. The City shall in all instances disclose information regarding the protest to the awarding agency.
 - b. Upon receipt of a protest before award, a contract may not be awarded, pending the City's resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the City. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

- c. If award is withheld pending the City's resolution of the protest, the procurement officer will inform the bidders or offerors whose bids or offers might become eligible for award of the contract. If appropriate, the bidders or offerors should be requested, before expiration of the time for acceptance of their bids or offers, to extend the time for acceptance to avoid the need for re-solicitation. In the event of failure to obtain such extension of bids or offers, consideration should be given to proceeding with award pursuant to paragraph (3)(1) of this section.
- d. Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with competitive proposals debriefing procedure (below), the procurement officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the City. Such justification or determination shall be approved at a level above the procurement officer, or by another official pursuant to agency procedures.
- e. The City shall make their best efforts to resolve protests within thirty-five (35) days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.
- f. The City protest decisions shall be well-reasoned and explain the City's position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

6. Competitive Proposal Debriefing Procedure

- a. An offeror, upon its written request received by the agency within three (3) working days after the date on which that offeror has received a notification to of award, shall be debriefed and furnished the basis for the selection decision and contract award.
- b. To the maximum extent practicable, the City will conduct the debriefing within five (5) working days after receipt of the written request.
- c. Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the procurement officer.
- d. The procurement officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.
- e. At a minimum, the debriefing information shall include
 - i. The City's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
 - ii. The overall evaluated cost or price (including unit prices), and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror,
 - iii. The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
 - iv. A summary of the rationale for award;
 - v. For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror;

- vi. Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
- f. The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information concerning:
 - i. Trade secrets;
 - ii. Privileged or confidential manufacturing processes and techniques;
 - iii. Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information;
 - iv. The names of individuals providing reference information about an offeror's past performance.
- g. An official summary of the debriefing shall be included in the contract file.

ATTACHMENT B – PROCUREMENT CHECKLISTS

[See following pages.]

PROCUREMENT CHECKLIST

Project Title _____

City Project # _____

Grant Name and Number _____

Type of Solicitation Advertisements for Bids RFP RFQ

Approved By: _____

Reviewed By: _____

This document must be utilized for all federal procurement and is the responsibility of the department head, engineer, or program administrator. This checklist provides guidance on federal procurement regulations. It does not address all procurement issues the City may experience. Use of the checklist provides a tool to cover most requirements experienced within federal procurement. Please note each agency has different requirements and the responsibility will fall upon the official conducting the procurement to obtain individual grant requirements before soliciting. The Finance Department will maintain a project file and will need all pertinent documentation and a copy of this checklist forwarded (electronically if possible) upon execution of an award or modification. The Internal Auditors and/or Accountants will review this document during the life of the project to ensure all requirements are being completed and documented appropriately.

Pre Solicitation

- | | |
|--------------------------|--|
| <input type="checkbox"/> | Independent Cost Estimate (must be completed before bids are opened) --The City must perform a cost or price analysis for every procurement action, including contract modifications. The engineer's cost estimate will meet this requirement for formal sealed bids. This must be a detailed cost breakdown for the overall estimate providing the elements, such as labor and materials, of the total cost. Cost estimates must be documented and placed in the applicable procurement folder. Any e-mails and/or written documentation concerning cost estimates should be retained in the procurement folder. (See next line and section below regarding architects or engineers (A/E) or professional services procurement.) Procurement Policy Section 3: Pre-Solicitation #3; (2 CFR 200.324(a)) |
|--------------------------|--|

<input type="checkbox"/>	<p>A cost analysis and documentation is required for a RFQ or RFP (competitive negotiations). Cost analyses are used when there is no price competition or when price competition is not the only evaluation factor, such as in procuring A/E, professional, consulting, or program administrator services. A cost analysis must be completed before awarding the contract and placed in the procurement file. Cost analysis is the evaluation of separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the project and ultimately, reasonable. To prepare a cost analysis 1) Obtain a detailed breakdown of the contractor's proposed cost and verify the accuracy of the cost and pricing information submitted, and evaluate. An analysis contains the following elements: 1) Is the cost reasonable, which means is it allowable under the grant; is it allocable (are costs logically related to, or required in the performance of the contract); and is the cost reasonable? 2) Is the cost necessary? 3) Compare costs proposed by the offeror with actual costs previously incurred by the same contractor for the same or similar work; compare costs of the same or similar work performed by other contractors; compare previous cost estimates from the offeror or other offerors for the same or similar items; compare the methods proposed by the offeror with the requirements of the solicitation; compare with the City's cost estimate prepared with the City Fee Schedule. Procurement Policy Section 3: Pre-Solicitation #4; HUD Quick Guide to Cost and Price Analysis; (2 CFR 200.324(a)).</p>	
<input type="checkbox"/>	<p>Are there any potential conflicts of interest? A conflict of interest could arise if the employee, officer, or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award. Document to the right if no conflict exists with a description of how this was determined. If a conflict of interest was found, include the determination and resolution of the investigation to the right. Procurement Policy Section 2; 2 CFR 200.318(c)(1).</p>	
<input type="checkbox"/>	<p>Describe the rationale for the method of procurement and selection of contract type. Procurement Policy Section 3: Pre-Solicitation #2; 2 CFR 200.318(i).</p>	

Solicitation		
<input type="checkbox"/>	Were prospective respondents allowed a reasonable amount of time to respond? Sealed bids are to be advertised for 3 consecutive weeks with the first advertisement being 21 days before the date of the opening of bids. TxGMS Publication of advertisement for bids. Procurement Policy Section XX: Methods of Procurement #3b; and 2 CFR 200.320(b)(ii)(A).	
<input type="checkbox"/>	Does solicitation contain a clear and accurate description of the technical requirements for the material, product or services, and scope of work (SOW)? Procurement Policy Section 4.1 #4; and 2 CFR 200.319(d)(1 - 2).	
<input type="checkbox"/>	Specifications and solicitation must not contain features that unduly restrict competition such as unreasonable or unnecessary experience or bonding requirements. A “brand name or equal” description may be used to define the performance or other important requirements of the procurement such as procurement of equipment to integrate with a particular brand of equipment. Procurement Policy Section 4: Full and Open Competition #2; and §200.319(d)(1)	
For competitive negotiation (Request for Proposal (RFP) or Request for Qualifications (RFQ)) such as for architectural or engineering (A/E) or program administrator (PA) contracts; are the below requirements contained in the solicitation?		
<input type="checkbox"/>	Were proposals solicited from an adequate number of qualified sources, and was the solicitation adequately publicized to achieve sufficient competition? Per ND State Law 54-44.7-03, the solicitation must be advertised 21 days before opening of proposals. Must solicit proposals from at least three qualified sources. Procurement Policy Section 4.2 Methods of Procurement #4(a); and §200.320(d).	
<input type="checkbox"/>	Did the solicitation identify all significant evaluation factors or selection criteria, including the corresponding point system to be used to rate the proposals/qualification statements? These factors include past performance, the ability of professional personnel, willingness to meet time and budget requirements if applicable, related experience on similar projects, and recent and current work for the City. ND State Law 54-44.7-03(5); Procurement Policy Section 4.2 Methods of Procurement #4(a)(i); and §200.320(b).	
<input type="checkbox"/>	Is this a solicitation for architectural/engineering (A/E) professional services? A/E professional services must be solicited with a RFQ. The method where price is not used as a selection factor, can only be used in procurement of A/E professional services. Procurement Policy Section 4.2 Methods of Procurement #4(b); §200.320(b)(2)(iv); and Chapter 11 of Title 40.	

<input type="checkbox"/>	If this is not a solicitation for A/E professional services, does the RFP contain cost as an evaluation factor? Request for proposals for services other than A/E, shall always include cost and at least one non-cost qualitative evaluation factor such as experience with like projects. Procurement Policy Competitive Negotiation (iii). Procurement Policy Section 4.2: Methods of Procurement #4(b); §200.320(b)(2)(iv); and Chapter 11 of Title 40.	
<input type="checkbox"/>	Document the City's efforts in hiring minority-owned business enterprises and women-owned business enterprises in this solicitation. Procurement Policy Section 3: Pre-Solicitation #6; and 2 CFR 200.321(a)(b).	
<input type="checkbox"/>	Solicitation requirements obtained from the program administrator and/or agency and incorporated into the solicitation and included in the bid requirements. Each funding agency could have differing clauses to be included in solicitations and contracts. Please check with the grant originator to obtain requirements. See below regarding construction requirement that could apply to A/E services.	
The below items are required by the City's Federal Grant Procurement Policy and must be included in solicitations with clauses included in the bid requirements.		
<input type="checkbox"/>	Notice of use of funding agency funds. For example, HUD CDBG-DR funds	
<input type="checkbox"/>	Davis Bacon labor requirements. Applicable for construction projects >\$2,000. Procurement Policy Section 6: #5; 29 CFR Part 5; Appendix II, Part 200(d).	
<input type="checkbox"/>	Section 3 clause, if funded by the Department of Housing and Urban Development (HUD). The Section 3 program requires recipients of certain HUD financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods. 24 CFR Part 135.32(b).	
<input type="checkbox"/>	Nondiscrimination, affirmative action, and equal employment opportunity in employment. Executive Order 11246 as amended; 41 CFR 60-1.4(b); 41 CFR 60-1.7(b); 41 CFR 60-4.2.	
<input type="checkbox"/>	The contractor will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act regarding procurement of recovered materials and solid waste management services. Procurement Policy Section 6 #11; 2 CFR 200.322; Appendix II, Part 200(J).	
<input type="checkbox"/>	Scope of work. Procurement Policy Section 4.1 #4; 2 CFR 200.319(d)(1-2).	
<input type="checkbox"/>	Requirement of affirmative efforts to hire women business enterprises and minority business enterprises. Procurement Policy Section 3: Pre-Solicitation #6(e); 2 CFR 200.321(a)(b).	

<input type="checkbox"/>	Debarment certification. Procurement Policy Section 6 #9; 2 CFR 180.220; Appendix II, Part 200(I).	
<input type="checkbox"/>	Byrd Anti-Lobbying Certification (for contract >\$100,000 (Appendix II to Part 200(I)); 31 U.S.C. 1352.	
Bid, RFP, or RFQ Documents		
<input type="checkbox"/>	Solicitation (Advertisement for Bids, RFP, or RFQ). Include a copy of the newspaper advertisement in the file plus the solicitation included in the bid documents. Procurement Policy Section 3: Pre-Solicitation #2; 2 CFR 200.318(i).	
<input type="checkbox"/>	If a construction contract > \$2,000, was a wage rate included in the bid documents? Procurement Policy Section 6 #4; Appendix II Part 200(D); 29 CFR Part 5.	
<input type="checkbox"/>	Was the rate checked 10 days before bid date? Document this by printing the 1st page of the wage rate with the date checked on the bottom of the webpage. If no change was made hand write on the page and place in the file. 29 CFR 1.6(c)(2)(i)(A).	
<input type="checkbox"/>	If the rate changed was it updated by addendum sent to all holders of the bid documents? This is documented by the addendum to be placed in the file. 29 CFR 1.6(c)(2)(i)(A).	
<input type="checkbox"/>	List of proposed bidders and suppliers receiving copies of the bid documents (if available.) Procurement Policy Section 3: Pre-Solicitation #2; 2 CFR 200.318(i).	
<input type="checkbox"/>	Are there adequate number of responses documented? Three (3) for small purchase and competitive negotiation (RFP or RFQ). Procurement Policy Page METHODS OF PROCUREMENT; two (2) or more for sealed bids. See below requirements if you do not have these minimums. Procurement Policy Section 4.2 #2-4; 2 CFR 200.320.	
<input type="checkbox"/>	CAUTION! When only one bid is received in response to a competitive bid solicitation, you do not have price competition. The solicitation is considered a Noncompetitive proposal. If you decide to award on the basis of a single submitted bid price, without negotiation, you must: 1) Send a written request and receive approval from the Awarding Agency if required (check with the awarding agency. 2) justify the price is fair and reasonable; 3) compare the bid price to your own in-house estimate or engineers estimate and past prices paid for the same or substantially similar item(s) in the past; 4) obtain information from the marketplace; 5) obtain a complete cost breakdown; 6) perform a cost analysis of the proposed price and; 7) document the rationale for the award decision and place in the procurement file. HUD Quick Guide to Cost and Price Analysis; Procurement Policy Section 4.2 #5; 2 CFR 200.320.	
<input type="checkbox"/>	Copy of all bid proposals included in the file. Procurement Policy Section 3: Pre-Solicitation #2; 2 CFR 200.318(i).	

<input type="checkbox"/>	Notes from Pre-Bid Conference(s) if held, included in the file. Procurement Policy Section 3: Pre-Solicitation #2; 2 CFR 200.318(i).	
<input type="checkbox"/>	Did the bid response include a 5% bid bond, if for a construction or facilities improvement project? Procurement Policy Section 9(1); 2 CFR 200.326(a).	
<input type="checkbox"/>	Documentation of reason for rejecting any and or all bids (including respondents not responsible or not responsive) must be kept in the procurement file. Procurement Policy Section 4.2 #3(e); Attachment A #3(f).	
<input type="checkbox"/>	A price analysis is required for every sealed bid procurement. The tabulations of bids with date and time of bid opening notated; along with any evaluations of the proposals documented will meet this requirement. Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing the separate cost elements of the lump sum proposal price. Price analyses are used to compare lump sum prices (not estimates) received from contractors in a competitive pricing situation (when sealed bids are obtained). Procurement Policy Section 3 #3; 2 CFR 200.324(a).	
<input type="checkbox"/>	Were there any disputes regarding the procurement? See Procurement Policy Attachment A #s 4-5 to understand how to document.	
<input type="checkbox"/>	Were the disputes handled, resolved, and disclosed? See Procurement Policy Attachment A #5 to understand how to document.	
<input type="checkbox"/>	Was a protest appropriately filed as noted in the Procurement Policy Attachment A #s 4 – 5?	
<input type="checkbox"/>	Did the City disclose information regarding the protest to the awarding agency? Procurement Policy Attachment A #5(a).	
<input type="checkbox"/>	Were all protest requirements met by the City as detailed in the Procurement Policy Attachment A #s 4 – 5?	
<input type="checkbox"/>	Was the protest resolved within 35 days after filing? Procurement Policy Attachment A 5(e).	
<input type="checkbox"/>	Were any bids or offers rejected or otherwise excluded from the competitive range notified promptly in writing by the procurement officer. The notice shall state the basis for the determination and a proposal revision will not be considered. Procurement Policy Attachment A #3(e).	

<input type="checkbox"/>	<p>If the procurement was a competitive negotiation, were unsuccessful offerors notified in writing within ten working days of contract award with the protest and debriefing procedures sent with the notification. (City current procedure is to include an award of bid notice with the items for the President of the City Commission to sign. After the President of City Commission signs the form, the respective departments are given the bid notice to be sent out the unsuccessful bidders.)</p>	
Contract/Agreement Documents		
<input type="checkbox"/>	<p>Has the contractor's debarment check been completed before recommendations are made to City Commission to award the contract? This will be completed by accessing the System For Award Management (SAM) website at https://www.sam.gov, search records. The printed page from the SAM Web site with the date of the check must be included in the procurement file. Procurement Policy Section 5.1 #s 2 – 3; Attachment A #2; 2 CFR 180.300 & 2424.300.</p>	
<input type="checkbox"/>	<p>If the contractor has been found to be suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date was the contractor's bid rejected, and the next lowest eligible bidder checked for debarment? Procurement Policy Attachment A #2.</p>	
<input type="checkbox"/>	<p>Is there a notice of contract award included in the file?</p>	
<input type="checkbox"/>	<p>Award--does the award document (contract or agreement) contain the below required clauses? Appendix II, Part 200 and CDBG-DR Contract Provisions.</p>	
<input type="checkbox"/>	<p>Is the period of performance clearly stipulated with the date of completion noted? Are there penalties for not meeting the performance standards? Procurement Policy Section 78 FR 14344</p>	
<input type="checkbox"/>	<p>Breach of contract terms including administrative, contractual, or legal remedies when contractors violate or breach contract terms, and providing such sanctions and penalties as may be appropriate? Procurement Policy Section 6 #1; Appendix II, Part 200(A).</p>	
<input type="checkbox"/>	<p>Termination for cause and for convenience by the City? (Contracts > \$10,000. Procurement Policy Section 6 #2; Appendix II, Part 200(B).</p>	
<input type="checkbox"/>	<p>Compliance with Executive Order 11246, Equal Employment Opportunity? (All construction contracts and subcontracts > \$10,000). Procurement Policy Section 6 #3; Appendix II, Part 200(C).</p>	
<input type="checkbox"/>	<p>Compliance with Copeland "Anti-Kick-Back" Act? (All construction contracts and subcontracts > \$10,000). Procurement Policy Section 6 #4; Appendix II, Part 200(D).</p>	

<input type="checkbox"/>	Compliance with the Davis-Bacon Act? (All construction or repair contracts or subcontracts > \$2,000). Procurement Policy Section 6 #5; Appendix II, Part 200(D).	
<input type="checkbox"/>	Was the correct wage rate included in the agreement documents? Procurement Policy Section 6 #5; Appendix II Part 200(D); 29 CFR Part 5.	
<input type="checkbox"/>	Compliance with 40 U.S.C. 3701-3708 The Contract Work Hours and Safety Standards Act. (All construction or repair contracts or subcontracts > \$2,000, and > \$2,500 for other contracts which involve the employment of mechanics or laborers.) Procurement Policy Section 6 #6; Appendix II Part 200(E).	
<input type="checkbox"/>	Notice of the awarding agency requirements and regulations pertaining to reporting. (All contracts.) (see individual agency requirements)	
<input type="checkbox"/>	Notice of the City and awarding agencies requirements and regulations pertaining to patent rights, copyrights, and rights in data? (All contracts.)	
<input type="checkbox"/>	Access to any books, documents, papers, or records of the project by the City, federal agencies, and the Comptroller General of the United States	
<input type="checkbox"/>	Records must be maintained for five years after the City formally closes out each program? League of Cities City Records Management Schedule found on the City's Web site.	
<input type="checkbox"/>	Compliance with the Clean Air Act, Clean Water Act, and EPA regulations. (All contracts, subcontracts, and sub grants in amounts > \$150,000) Procurement Policy. Procurement Policy Section 6 #7; Appendix II Part 200(G).	
<input type="checkbox"/>	Is the Green Building Standards clause included if applicable (New construction or replacement of substantially damaged residential buildings.) 81 FR 36566 dated June 7, 2016	
<input type="checkbox"/>	Does the contract contain a clause allowing the City and federal agencies to be permitted to require changes, remedies, changed conditions, access and record retention, and suspension of work clauses approved by the governing body?	
<input type="checkbox"/>	Does the contract contain requirements that a contract award must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM). Procurement Policy Section 6 #8; Appendix II Part 200(H).	

<input type="checkbox"/>	<p>Does the contract contain a Byrd Anti Lobbying Clause? Procurement Policy Section 6 #9; Appendix II Part 200(I).</p>	
<input type="checkbox"/>	<p>Does the contract contain a clause stating the contractor will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act? Procurement Policy Section 6 #10; Appendix II Part 200(J).</p>	
<input type="checkbox"/>	<p>If the procurement was a competitive negotiation, where price is not the only factor, was a cost ceiling clearly established in the contract which may not be exceeded without a contract modification? Procurement Policy Section 4.2 #4(b); 24 CFR 200.318(j)(2).</p>	
<input type="checkbox"/>	<p>If the procurement was a competitive sealed bid procurement, was a firm fixed price contract (either lump sum or unit price) awarded to the responsible bidder whose bid is lowest in price and conforms to all the material terms and conditions of the advertisement for bids. Procurement Policy Section 4.2 #3(a)(iii); 2 CFR 200.320(1)(b)(i-ii) and 200.320(1)(b)(2)).</p>	
<input type="checkbox"/>	<p>If the contract was not awarded to the lowest bidder in the case of a competitive sealed bid procurement, was a justification for awarding included in the file with the approval of the City Commission? Include the minutes from the Commission meeting Procurement Policy Section 8 # 2(d); 2 CFR 200.325(b).</p>	
<input type="checkbox"/>	<p>Prohibited contracts--Agreements and/or contracts must not contain "cost plus percentage of cost" and "percentage of construction costs" pricing structures. Procurement Policy Section 5.2 #5; 2 CFR 200.324(d).</p>	
<input type="checkbox"/>	<p>Contractor Section 3 Plan with applicable tables must be included in the procurement file for HUD funded projects. 24 CFR 135</p>	
<input type="checkbox"/>	<p>List of subcontractors must be included for the procurement file. Per contract requirements</p>	
<input type="checkbox"/>	<p>The general contractor is responsible for checking debarment of their subcontractors. This clause is usually found in the General Conditions from the Bid Documents, which are usually part of the contract documents.</p>	

<input type="checkbox"/>	Subcontractors must be required to adhere to the requirements pertinent to the funding agency and type of agreement. For example, the contractor must include requirements in subcontractor agreements such as affirmative action, Section 3, and equal opportunity, and the Byrd Anti-Lobbying Amendment clause. Procurement Policy Section 6 #10; CDBG-DR Compliance Provisions.	
<input type="checkbox"/>	Performance bond for 100% of the contract if required, must be included in the file. Procurement Policy Section 9 #2.	
<input type="checkbox"/>	Payment bond for 100% of the contract if required, must be included in the file. Procurement Policy Section 9 #3.	
<input type="checkbox"/>	Insurance certificates in the amount required in the bid documents must be included in the file. Per contract documents	
Contract/Agreement Execution		
<input type="checkbox"/>	Is the contract/agreement signed and dated by both parties? The contract/agreement must be signed after the City Commission's approval. Documentation of City Commission approval must be kept in the file.	
<input type="checkbox"/>	Is the proper date placed on the contractual document after it is signed by the President of the City Commission?	
<input type="checkbox"/>	Is the proper date contained within the actual contractual document, if the document contains this language?	
Change Orders, Amendments, or Modifications To Agreements		
<input type="checkbox"/>	Is there a copy of each approved change order placed in the procurement file?	
<input type="checkbox"/>	Change orders are normally not approved by City Commission or signed by the President of the City Commission. At times amendments and modifications are sent to the City Commission for approval and to the President of the City Commission for signature. If this is the case, the City Commission must approve before the City Commission signs the documents. Include the City Commission minutes to document approval before signature.	
<input type="checkbox"/>	Is the proper date placed on the change order, amendment, or modification after it is signed by the approving official?	
<input type="checkbox"/>	Is the proper date contained within the actual change order, amendment, or modification documents, if the document contains this language?	

<input type="checkbox"/>	<p>Justification and cost estimate for the change order before a proposal is requested from the contractor with explanation of how the change order relates to the original scope of the contract and to the National Objective (if a HUD project) for the project must be prepared and kept in the file.</p>	
<input type="checkbox"/>	<p>A signed contractor proposal must be included in the file?</p>	
<input type="checkbox"/>	<p>Cost analyses for change orders must be completed and placed in the procurement file. To complete a cost analysis 1) obtain a detailed breakdown of the contractor's proposed cost; 2) verify the accuracy of the cost and pricing information submitted; 3) evaluate the reasonableness of proposed costs by ensuring they meet these three critical tests: are the costs allowable, are the costs allocable (are they logically related to or required in the performance of the contract), are the costs reasonable; 4) are the costs necessary and justifiable to the CDBG-DR activity (should be evaluated by the engineers or other technical personnel) 5) Compare costs with: a. actual costs previously incurred by the same contractor for the same or similar work; b. actual costs of previous of the same or similar work by other contractors; c. previous cost estimates from the offeror or other offerors for same or similar items; d. do the costs reflect the technical approach proposed and the work required? and e. compare to the cost estimate from the engineer, or staff. Copies of subsequent modified cost estimates must be kept with the original with some explanation why they changed it after the bid process. Keep documentation of cost estimates, comparisons, and worksheets to attach to the cost analysis as backup. HUD Quick Guide to Cost and Price Analysis and Procurement Policy Page 7</p>	
Additional Funding Agency Requirements		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
Miscellaneous Correspondence - list below		
<input type="checkbox"/>		
<input type="checkbox"/>		

Project Completion

<input type="checkbox"/>	Commission approval of final billing and closure of the project including memo to committee.	
<input type="checkbox"/>	Contractor final lien waivers. City requirement	
<input type="checkbox"/>	Subcontractor final lien waivers. City requirement	

Administrative Check List for Federal Procurements

The following check list is to be followed for all procurements for which federal funds will be used with this checklist setting forth the administrative process in carrying out the Federal Procurement Policies and Procedures:

Procurement is defined as any use of the permitted methods of procurement under 2 CFR 200.320

_____ NDR Program Manager authorizes procurement

_____ Draft procurement format for RFP and BID as set forth in 2 CFR 200.300 is submitted to Finance Director and City Attorney for comment

_____ If required by city policy or the Federal Procurement Policies & Procedures for City Commission approval, draft procurement including sole source is submitted to NDR Program Manager

_____ After City Commission approval or if not required, or if a micro or small purchase, final procurement documents are submitted to NDR Program Manager for authorization

_____ Public notification of the procurement shall be posted on the City's website and, if required by the type of procurement, through legal notice in *The Forum* at least once but can be more frequently if required by city policy or deemed appropriate by the NDR Program Manager for transparency with the public

_____ Independent Cost estimate of contract cost and price as set forth in 2 CFR 200.324 is submitted to the Finance Director and the NDR Program Manager.

_____ For RFPs and Sealed Bids, there shall be a pre-bid conference scheduled for anyone interested in attending. All questions and answers at the pre-bid conference as well as any follow-up questions and answers after the pre-bid conference shall be posted on the city website on a timely basis to allow all interested in responding to access the questions and answers

_____ All responses to RFPs and Bids shall be received by the Finance Director or designee

_____ Time and opening location of RFP and Bid responses shall be posted on city website at least 24 hours in advance of the opening of responses

_____ After determination of lowest responsible response for all procurements or completion of sole source contract, a necessary and reasonable assessment shall be completed and submitted to the Finance Director and the NDR Program Manager

_____ Draft package of documents for approval of an award by the City Commission as required by city policy shall be submitted to the NDR Program Manager as required to be added to the agenda for the next available City Commission Meeting

_____ Upon City Commission approval, if required, and, signature of the President of the City Commission, if required, and all other procurements not requiring City Commission action the complete procurement package shall be submitted to the Finance Director or designee