

TEMPORARY RESOLUTION NO. 64-20

PERMANENT RESOLUTION NO. _____

A RESOLUTION TO ADOPT CITY OF LANCASTER POLICIES REGARDING
FEDERAL GRANTS

WHEREAS, federal award recipients must document their policies and procedures to comply with certain aspects of financial and program management of federal grants required by the federal Office of Management and Budget ("OMB") Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards guidelines;

BE IT RESOLVED BY COUNCIL OF THE CITY OF LANCASTER, STATE OF
OHIO

SECTION 1. City Council hereby adopts policies and procedures in compliance with the guidelines set forth in the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for cash management, determination of allowable costs, procurement evaluation and selection, internal controls, and time and effort as set forth in Exhibit "A" attached hereto, or in a form substantially similar, together with any changes or amendments that are not inconsistent with this resolution and not substantially adverse to this authority approved by Council.

SECTION 2. That this resolution shall take effect and be in force from and after the earliest period allowed by law

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Date Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Finance Committee



**City of Lancaster
Federal Grant Policy**

The purpose of this policy is to outline policies and procedures to be followed on a consistent basis in order to help ensure compliance with federal requirements related to federal grants. As a federal award recipient, the City of Lancaster must document our policies and procedures to comply with certain aspects of financial and program management of federal grants required by the federal Office of Management and Budget (“OMB”) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards guidelines with regard to the following:

Equipment

Cash Management

Time and Effort Reports

Internal Controls

Cost Principles/Spending Federal Funds

Procurement

These policies apply to all departments within the City of Lancaster who don’t otherwise have their own federal policies addressing these issues.

Patricia Nettles
Auditor

David Scheffler
Mayor

Adopted on _____, 2020

I. EQUIPMENT

Use.

1. Equipment must be used by the City in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the City must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency.
2. During the time equipment is used on the project or program for which it was acquired, the City must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by the Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-Federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
3. Notwithstanding the encouragement in § 200.307 Program income to earn program income, the City must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
4. When acquiring replacement equipment, the City may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
4. Adequate maintenance procedures must be developed to keep the property in good condition.

5. If the City is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the City must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

1. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
2. Except as provided in § 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the City or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
3. The City may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the City must be entitled to compensation for its attributable percentage of the current fair market value of the property.
4. In cases where the City fails to take appropriate disposition actions, the Federal awarding agency may direct the City to take disposition actions.

II. CASH MANAGEMENT OF GRANTS

In order to provide reasonable assurance that all assets, including Federal, State, and local funds, are safeguarded against waste, loss, unauthorized use, or misappropriation, the City shall implement internal controls in the area of cash management.

The City's payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury, the State of Ohio or other pass-through entity and disbursement by the City, regardless of whether the payment is made by electronic fund transfer, or issuance or redemption of checks, warrants, or payment by other means.

The City shall use forms and procedures required by the grantor agency or pass-through entity to request payment. The City shall request grant fund payments in accordance with the provisions of the grant. Additionally, the City's financial management systems shall meet the standards for fund control and accountability as established by the awarding agency.

The City is authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as deemed appropriate when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

When the City uses a cash advance payment method, the following standards shall apply:

- A. The timing and amount of the advance payment requested will be as close as is administratively feasible to the actual disbursement for direct program or project costs and the proportionate share of any allowable indirect costs.
- B. The City shall make timely payment to contractors in accordance with contract provisions.
- C. To the extent available, the City shall disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- D. The City shall account for the receipt, obligation and expenditure of funds.
- E. Advance payments will be deposited and maintained in insured accounts whenever possible.
- F. Advance payments will be maintained in interest bearing accounts unless the following apply:
 - 1. The City receives less than \$120,000 in Federal awards per year;
 - 2. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances;
 - 3. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources;
 - 4. A foreign government or banking system prohibits or precludes interest bearing accounts.
- G. Pursuant to Federal law and regulations, the City may retain interest earned in an amount up to \$500 per year for administrative costs. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System ("PMS") through an electronic medium using either Automated Clearing House ("ACH") network or a Fedwire Funds Service payment. Remittances shall include pertinent information of

the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interest earned on Federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another Federal agency payment system.

Applicable Laws, Regulations, and Guidance:

2 C.F.R. 200.305

II. TIME AND EFFORT REPORTS

Charges to Federal awards for salaries and benefits must be based on records that accurately reflect the work performed. These records must:

- A. Be supported by a system of internal controls which provide reasonable assurance that the charges are accurate, allowable, and properly allocated;
- B. Be incorporated into the official records of the City;
- C. Reasonably reflect the total activity for which the employee is compensated by the City, not exceeding 100% of the compensated activities;
- D. Encompass both Federally assisted and other activities compensated by the City on an integrated basis;
- E. Comply with the City's established accounting policies and practices;
- F. Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one (1) Federal award, a Federal award and non-Federal award, an indirect cost activity and a direct cost activity, two (2) or more indirect activities which are allocated using different allocation bases, or an unallowable activity and a direct or indirect cost activity.

The City will also follow any time and effort requirements imposed by the pass-through entity to the extent that they are more restrictive than the Federal requirements. Each department is responsible for the distribution, collection, and retention of all employee effort reports.

Reconciliations

Budget estimates alone are not to be used as support for charges to Federal awards. However, the City may use budget estimates for interim accounting purposes so long as:

- A. The system used by the City to establish budget estimates produces reasonable approximations of the activity actually performed;
- B. Any significant changes in the corresponding work activity are identified by the City and entered into the City's records in a timely manner;
- C. The City's internal controls include a process to review after-the-fact interim charges made to a Federal award based on budget estimates and ensure that all necessary adjustments are made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated;

Applicable Laws, Regulations, and Guidance:

2 C.F.R. 200.430, 200.431

IV. INTERNAL CONTROLS

Internal Controls establish and maintain effective control over the Federal award that provides reasonable assurance that the City is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Internal Controls should be designed to help ensure or detect:

- A. Compliance with Federal statutes, regulations, and the terms and conditions of the Federal awards;
- B. Evaluate and monitor the City's compliance with statutes, regulations and the terms and conditions of Federal awards;
- C. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings;
- D. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the City considers sensitive consistent with applicable Federal, State, and local laws regarding privacy and obligations of confidentiality.

Internal controls used throughout the City will apply to Federal transactions as well, but in certain cases specific controls to ensure compliance with grant requirements will need to be put in place at the department level. These controls could include, but are not limited to:

- A. Reviewing expenditures to ensure they are allowable under the grant agreement rather than just ensuring they are for a proper public purpose.
- B. Ensuring transactions occur within the allowable time-frame for the grant.
- C. Ensuring expenditures are within the grant budget not just within the City appropriations.

V. COST PRINCIPLES/SPENDING FEDERAL FUNDS

The City is responsible for the efficient and effective administration of grant funds through the application of sound management practices. Such funds shall be administered in a manner consistent with all applicable Federal, State and local laws, the associated agreements/assurances, program objectives and the specific terms and conditions of the grant award.

I. Cost Principles

A. Except where otherwise authorized by statute, costs shall meet the following general criteria in order to be allowable under Federal awards:

1. Be necessary and reasonable for proper and efficient performance and administration of the Federal award and be allocable thereto under these principles.
 - a. To determine whether a cost is reasonable, consideration shall be given to:
 1. Whether a cost is a type generally recognized as ordinary and necessary for the operation of the City or the proper and efficient performance of the Federal award;
 2. The restraints or requirements imposed by such factors as sound business practices, arm's length bargaining, Federal, State, local, tribal and other laws and regulations;
 3. Market prices for comparable goods or services for the geographic area;
 4. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities; and
 5. Whether the cost represents any significant deviation from the established practices or City policy which may increase the expense.

While Federal regulations do not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, whether a cost is necessary is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the City can demonstrate that the cost addresses an existing need, and can prove it.

When determining whether a cost is necessary, consideration may be given to whether:

1. The cost is needed for the proper and efficient performance of the grant program;
2. The cost is identified in the approved budget or application;
3. There is a programmatic benefit associated with the cost;
4. The cost aligns with identified needs based on results and findings from a needs assessment;
5. The cost addresses program goals and objectives and is based on program data.

A cost is allocable to the Federal award if the goods or services involved are chargeable or assignable to the Federal award in accordance with the relative benefit received.

B. Conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the Federal award.

- C. Be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the City.
- D. Be afforded consistent treatment. A cost cannot be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned as an indirect cost under another award.
- E. Be determined in accordance with generally accepted accounting principles.
- F. Be representative of actual cost, net of all applicable credits or offsets.

The term "applicable credits" refers to those receipts or reductions of expenditures that operate to offset or reduce expense items allocable to the Federal award. Typical examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the State relate to the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate.

- G. Be not included as a match or cost-share, unless the specific Federal program authorizes Federal costs to be treated as such.
- H. Be adequately documented:
 - 1. In the case of personal services, the department shall implement a system for City personnel to account for time and efforts expended on grant funded programs to assure that only permissible personnel expenses are allocated;
 - 2. In the case of other costs, all receipts and other invoice materials shall be retained, along with any documentation identifying the need and purpose for such expenditure if not otherwise clear.

Selected Items of Cost

The City shall follow the rules for selected items of cost at 2 C.F.R. Part 200, Subpart E when charging these specific expenditures to a Federal grant. When applicable, City staff shall check costs against the selected items of cost requirements to ensure the cost is allowable. In addition, State, City and program-specific rules, including the terms and conditions of the award, may deem a cost as unallowable and City personnel shall follow those rules as well.

Cost Compliance

Each department shall require that grant program funds are expended and are accounted for consistent with the requirements of the specific program and as identified in the grant application. Compliance monitoring includes accounting for direct or indirect costs and reporting them as permitted or required by each grant.

Determining Whether a Cost is Direct or Indirect:

- A. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

These costs may include: salaries and fringe benefits of employees working directly on a grant-funded project; purchased services contracted for performance under the grant; travel

of employees working directly on a grant-funded project; materials, supplies, and equipment purchased for use on a specific grant; and infrastructure costs directly attributable to the program (such as long distance telephone calls specific to the program, etc.).

- B. Indirect costs are those that have been incurred for a common or joint purpose benefitting more than one (1) cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs.

These costs may include: general data processing, human resources, utility costs, maintenance, accounting, etc.

Federal programs with supplement not supplant provisions must use a restricted indirect cost rate. In a restricted rate, indirect costs are limited to general management costs. General management costs do not include divisional administration that is limited to one (1) component of the City, the elected officials of the City, the heads of departments, compensation of the chief executive officer of any component of the City, and operation of the immediate offices of these officers.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

1. Administrative or clerical services are integral to a project or activity.
2. Individuals involved can be specifically identified with the project or activity.
3. Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency.
4. The costs are not also recovered as indirect costs.

Where a Federal program has a specific cap on the percentage of administrative costs that may be charged to a grant, that cap shall include all direct administrative charges as well as any recovered indirect charges.

Effort should be given to identify costs as direct costs whenever practical, but allocation of indirect costs may be used where not prohibited and where indirect cost allocation is approved ahead of time by the granting agency or the pass-through entity (Federal funds subject to 2 C.F.R. Part 200 pertaining to determining indirect cost allocation).

Timely Obligation of Funds

Obligations are orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

The following table illustrates when funds are determined to be obligated under the Federal regulations:

If the obligation is for:

- A. Acquisition of property - on the date which the City makes a binding written commitment to acquire the property.
- B. Personal services by an employee of the City - when the services are performed.
- C. Personal services by a contractor who is not an employee of the City - on the date which the City makes a binding written commitment to obtain the services.
- D. Public utility services - when the City receives the services.
- E. Travel - when the travel is taken.
- F. Rental of property - when the City uses the property.
- G. A pre-agreement cost that was properly approved by the granting agency under the cost principles in 2 C.F.R. Part 200, Subpart E – Cost Principles - on the first day of the project period.

Period of Performance

All obligations must occur on or between the beginning and ending dates of the grant project. This period of time is known as the period of performance. The period of performance is dictated by statute and will be indicated in the Grant Award Notification ("GAN"). As a general rule, State-administered Federal funds are available for obligation within the year that Congress appropriates the funds for. For direct grants, the period of performance is generally identified in the GAN.

In the case of a State-administered grant, obligations under a grant may not be made until the grant funding period begins or all necessary materials are submitted to the granting agency, whichever is later. In the case of a direct grant, obligations may begin when the grant is, unless an agreement exists with granting agency or the pass-through entity to reimburse for pre-approval expenses.

For both State-administered and direct grants, regardless of the period of availability, the City shall liquidate all obligations incurred under the award not later than ninety (90) days after the end of the funding period unless an extension is authorized. Any funds not obligated within the period of performance or liquidated within the appropriate timeframe are said to lapse and shall be returned to the awarding agency. Consequently, the City shall closely monitor grant spending throughout the grant cycle.

2 C.F.R. 200.403-.406, 200.413(a)-(c), 200.430(a), 200.431(a), 200.458 C.F.R. 200.474(b)

VI. PROCUREMENT

Purpose: Establish standards and guidelines for the procurement of services, supplies or other property purchased with federal monies for the City.

Scope: This policy applies to all departments within the City who don't otherwise have their own federal procurement policy.

I. General Procurement Standards (2 CFR 200.318):

- A. Procurement of all supplies, materials, equipment and services paid for from Federal funds or City matching funds shall be made in accordance with all applicable Federal, State and local statutes and/or regulations, the terms and conditions of the Federal grant and City policies and administrative procedures where they do not conflict with the Federal or grant requirements.
- B. The City shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contract or purchase order.
- C. Conflicts of Interest:
 - 1. No employee, officer or agent 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.
 - 2. A conflict of interest would arise when:
 - a. The employee, officer or agent, any member of their immediate family, their partner, or an organization which employees or is about to employ and of the parties indicated herein, has financial or other interest in or a tangible personal benefit from a firm considered for a contract.
 - b. The officer, employees and agents of the City may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.
 - c. Violations of the conflict of interest standards established here will subject the employee, officer or agent to disciplinary action.
 - d. All violations of these standards shall be reported to the grantor agency immediately.
- D. The City shall avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis should be made of lease versus purchase alternative, and any other appropriate analysis to determine the most economical approach.
- E. The City shall award a contract only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See Suspension and debarment.
- F. The City will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following:

1. Rationale for the method of procurement,
2. Selection of contract type,
3. Contractor selection or rejection, and
4. Basis for the contract price (including a cost or price analysis).

G. Time and Material type contracts

1. The City may use time and materials type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the City is the sum of:
 - a. The actual cost of materials; and
 - b. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
2. Since this formula generates an open-ended contract price, a time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the City awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

II. Competition (2 CFR 200.319)

- A. 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 or 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:
 1. Placing unreasonable requirements on firms in order for them to qualify to do business;
 2. Requiring unnecessary experience and excessive bonding;
 3. Noncompetitive pricing practices between firms or between affiliated companies;
 4. Noncompetitive contracts to consultants that are on retainer contracts;
 5. Organizational conflicts of interest;
 6. 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
 7. Any arbitrary action in the procurement process.
- B. The City prohibits the use of statutorily or administratively imposed state or local preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
- C. All procurement solicitations must:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must 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 equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- D. The City must ensure that all prequalified lists of persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also the City must not preclude potential bidders from qualifying during the solicitation process.

III. Methods of procurement to be followed (2 CFR 200.320)

A. Micro-purchases

1. Micro-purchases is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (subject to change).
2. To the extent practicable, the City must distribute micro-purchases equitable among qualified suppliers.
3. May be awarded without soliciting competitive quotations if the City considers the price to be reasonable.

B. Small purchases

1. Small purchase procedures are those relatively simple and informal procurement methods for securing series, supplies or other property that do not cost more than \$150,000. Note: State law requires any purchases in excess of \$50,000 be bid unless specifically exempt from the state law.
2. Price or rate quotes must be obtained from an adequate number of qualified sources.

C. Sealed bids

1. In order for sealed bidding to be feasible, the following conditions should be present:
 - a. A complete, adequate and realistic specification or purchase description is available;
 - 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.
- 2. If sealed bids are used, the following requirements apply:
 - a. 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 must be publicly advertised;
 - c. The invitation for bids, which must include any specification and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - d. All bids will be opened at the time and place prescribed in the invitation for bids;
 - e. Bids must be opened publicly;
 - f. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Factors such as discounts, transportation cost and life cycle costs must be considered in determining which bid is lowest.
 - g. Any or all bids may be rejected if there is a sound documented reason.

D. Competitive proposals

- 1. Normally used with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.
- 2. Requirements for competitive proposals
 - 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 City must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of the fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of architectural/engineering professional services. It cannot be used to purchase other types of services through architectural/engineering firms are a potential source to perform the proposed effort.

- E. Noncompetitive proposals – procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - 1. The item is available only from a single source;
 - 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - 3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
 - 4. After solicitation of a number of sources, competition is determined inadequate.
- IV. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR 200.321)
 - A. The City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus firms are used when possible.
 - B. The steps include:
 - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are a potential source;
 - 3. Dividing total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 5. 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
 - 6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in (1) through (5) above.
- V. Contract cost and price (2 CFR 200.323)
 - A. The City must perform a cost or price analysis in connection with every procurement action in excess of \$250,000 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 City must make independent estimates before receiving bids or proposals.
 - B. The City must negotiate profit as a separate element of the price 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 must 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.

- 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 City under Subpart E - Cost Principles of this part. The City may reference its own cost principles that comply with the Federal cost principles.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

VI. Suspension and Debarment (2 CFR 200.213)

- A. The City is subject to and shall abide by the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.
- B. Suspension is an action taken by the City that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 CFR Part 180 Subpart G)
- C. Debarment is an action taken by the City to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (2 CFR Part 180 Subpart H)
- D. The City shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts over \$25,000, the City shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors at www.sam.gov; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 CFR Part 180 Subpart C)