Section I
GENERAL

PURPOSE

To establish the manner by which all City procurement is to be conducted as well as to ensure City compliance with applicable laws relating to the expenditure of public funds.

POLICY

When authorized to procure material or service, all City employees shall follow this policy to correctly and ethically process a procurement need and ensure the efficient use of public funds. All City rules, regulations, laws, resolutions and the City Purchasing Ordinance are incorporated herein. See the following chapters of the Lodi Municipal Code and the procurement standards in 2 CFR 200.318 through 200.326 of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*

Chapter 2.12 – City Manager
Chapter 3.20 – Purchasing System

OVERVIEW

The City's Purchasing Ordinance and Purchasing Policy are in place as your guideline to ensure materials and services are purchased in a legal and cost-effective manner. Most services will require a standard City professional services agreement which can be found on the City's intranet. Each agreement must be approved as to form by the City Attorney's office. A one-time service procured through a purchase order is permissible (3.20.085) with review of its risk and the appropriate insurance requirements met.

The purchasing functions are decentralized, with each Department/Division responsible for compliance with City policies and procedures. The City Manager's purchasing authority will be set at $80,000 at the commencement of this policy. The City Manager's purchasing authority and all other purchasing thresholds established by this Policy, shall be adjusted annually to account for inflation. Beginning on July 1 following the adoption of this Policy, and each July 1 thereafter, applicable purchasing thresholds shall be increased by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), San Francisco-Oakland-Hayward Area, as published by the U.S. Bureau of Labor Statistics, using the most recently available calendar year data.

The adjusted threshold shall be rounded to the nearest $100. The Purchasing Officer shall calculate the adjusted thresholds and publish the revised amounts annually. In no event shall a decrease in the CPI result in a reduction of an existing purchasing authority threshold. ~~The City Manager is authorized to execute contracts on behalf of the city in the amount of $60,000 or less;~~ The City Manager~~he/she~~ may delegate purchasing authority to qualified staff members to purchase or contract for specific supplies, services and equipment (3.20.060).

There is established the position of P~~p~~urchasing O~~o~~fficer. The P~~p~~urchasing O~~o~~fficer shall be appointed by the C~~c~~ity M~~m~~anager and shall be the head and have general oversight of the purchasing functions of the C~~c~~ity. The duties of the purchasing officer may be combined with those of any other office or position. (3.20.020 – 3.20.030)

The following apply to all purchases made by the City of Lodi:

1. No purchase will be approved or undertaken unless an appropriation has been established through either the adopted annual budget or City Council approval of additional appropriations. Purchases should be budgeted within D~~d~~ivision budgets, contained in an individual organization and object.
   - ~~1.~~ It is the responsibility of the Department/Division to maintain budget control of their individual budgets. Ultimate responsibility for the individual budget resides with the Department Director.

2. Certain purchases are unique in nature and do not lend themselves to the process of competitive bidding. These items are excluded from the competitive bidding and purchase order requirements. These items include, but are not limited to, State or County services, debt service payments, ongoing expenses for utilities (monthly cost of power purchases, telephone services, refuse pickup, non-profit allocations, etc.)

3. The City Manager is authorized to execute contracts on behalf of the C~~c~~ity in amounts of $8~~6~~0,000 or less. All Department D~~d~~irectors are authorized to execute contracts on behalf of the C~~c~~ity in the amounts of $4~~3~~0,000 or less (2.12.060). The City Manager may, in writing, delegate to qualified staff the authority to purchase or contract for specified supplies, services, and equipment that conform to the procedures established by the Purchasing System (2.12.060).

4. The purchase and disposition of fleet vehicles and other specific equipment governed by the C~~c~~ity's fleet policies and procedures, as adopted by resolution of the C~~c~~ity C~~c~~ouncil, are exempt from the limits specified in item 3 above (3.21.130). The City Manager, or his/her designee, is authorized to solicit bids and award contracts for the purchase of vehicles costing $100~~50~~,000 or less per C~~c~~ity's Fleet Policies and Procedures (Resolution 97-33, revised 03/05/2008).

5. The purchase of electronic hardware and software shall be under the direction of the Information Technology Manager and shall be in accordance with the City of Lodi Administrative Polices – Information Systems – Section 5 Software Selection and Acquisition and shall be by negotiation, requests for proposal or competitive bids. Awards shall be based on best value, request for proposal, or bid. Purchase of electronic hardware of software over $8~~6~~0,000 requires the approval of the City Council. (LMC 3.20.077).

6. Public Works projects are governed by Public Contract Code (PCC) Section 22000, also known as the Uniform Pubic Construction Cost Accounting Act. Public Works projects are defined by PCC Section 22002 (c) and are subject to the following limits set forth in Section 22032:

a. Projects of $75~~60~~,000 or less may be let by Purchase Order or negotiated contract (no bids are required).
b. Projects between $75~~60~~,000 and $22~~0~~0,000 may be let by informal bidding process as set forth in PCC 22034.
c. Projects more than $22~~0~~0,000 are to be let by formal bidding procedures.

~~6.~~7. Where a procurement involves the expenditure of state or federal grant funds, the procurement process shall comply with such state or federal laws. (LMC 3.20.095 and Purchasing Policy - Section IV~~)~~

~~2.~~1. No City employee shall have a direct or indirect financial interest in any contract or purchase of goods or services entered into by the City, or shall derive any personal benefit from the City's purchase of goods or services.

~~3.~~2. No City employee shall use the City's purchasing procedures to obtain property for personal use by misrepresenting to vendors for the purpose of obtaining price discounts for personal purchases.

~~4.~~3. No City employee shall draft or cause to be drafted any specifications for bids in such a way as to intentionally limit the bidding directly or indirectly to any on bidder.

~~5.~~4. Records of bids, requests for proposals (RFP), requests for qualifications (RFQ) of both successful and unsuccessful requests shall be kept in accordance with the *Local Government Records Management Guidelines* as prepared by the Secretary of State and shall be open for public inspection. Generally, records of successful bids, RFP's and RFQ's are subject to be maintained for up to seven years; unsuccessful up to three years.

~~6.~~5. The City Manager may make minor changes to the policy without obtaining prior City Council approval. Substantive changes will require Council authorization. A minor change is one that relates to administrative procedure and a substantive change is one that impacts compliance with municipal code or other Council authority threshold.

SOLICITATION THRESHOLDS

The dollar limits for purchases of supplies or services are established in the City Purchasing Ordinance. Purchases shall not be split to avoid the required procedures or certain dollar limits. Informal procedures are used when the value of the purchase or services is $8~~6~~0,000 or less. Formal procedures are used when the value of the purchase or service is more than $8~~6~~0,000.

Departments are responsible for obtaining quotes/bids as indicated below:

- Purchases less than $10,000 – No solicitation of bids are required; however bids are desirable when in the best interest of the City to do so. Verbal bids are acceptable. Advertisement of bids is not required
- Purchases between $10,000 and $8~~6~~0,000 – Three written bids or proposals; advertisement of bids is not required.

- Purchases greater than $8~~6~~0,000 – Formal sealed bids and proposals are required. Advertisement of bids is required.
- Vehicle purchases greater than $~~5~~100,000 – Require the approval of the City Council prior to soliciting and awarding of bids.

Informal procedures are used when the value of the purchase/service is $8~~6~~0,000 or less. Formal procedures are used when the value of the purchase /service is more than $8~~6~~0,000. Value of the purchase must include all costs associated with the purchase including all taxes, fees and freight as applicable.

Staff shall solicit quotations for informal bids by written request for proposal or qualifications, by telephone, or by electronic data exchange. Solicitation of formal purchases must be by Invitation for Bid (IFB), Request for Proposal (RFP) or Request for Qualification.

Local Vendor Preference

The City recognizes the economic benefits that local businesses provide to the community through job creation, investment, and tax revenue generation. To support local economic development, the City will apply a local vendor preference in the evaluation of bids and proposals, provided such preference is permitted by applicable law and does not conflict with state or federal funding requirements.

A "Local Vendor" shall be defined as a business that:
1. Maintains a physical business location within the City limits;
2. Holds a valid City business license;
3. Complies with all applicable local, state, and federal laws and regulations; and
4. Has maintained continuous business operations within the City for a minimum of one (1) year prior to the solicitation date.

For competitive procurements, the City may apply a preference of up to five percent (5%) of the lowest responsive and responsible bid submitted by a non-local vendor, not to exceed $50,000, when evaluating bids. The preference shall be used solely for evaluation purposes and shall not result in payment of a higher contract amount than the awarded bid price.

In the event two or more bids or proposals are otherwise determined to be equal in price, quality, and service, preference may be given to the Local Vendor.

The local preference shall not apply when:
- Prohibited by federal or state law, grant requirements, or funding conditions;
- There is no responsive and responsible Local Vendor;
- The procurement is being conducted through cooperative purchasing agreements, state contracts, or piggyback contracts; or
- Application of the preference would otherwise be determined by the Purchasing Officer to be contrary to the best interests of the City.

Nothing in this section shall require the City to award a contract to a Local Vendor when another vendor is determined to provide the best value, qualifications, experience, service, or overall benefit to the City.

ISSUING THE QUOTE/BID/RFP/RFQ

Solicitations over $10,000 require competitive quotes. For informal purchases, staff are to make all reasonable attempts to obtain at least three written quotes/bids. Staff are encouraged to use the C~~c~~ity's online bidding system which notifies businesses of various bid opportunities. The online system ensures the maximum exposure and competition. Departments may also maintain lists of potential firms.

- ~~Departments shall solicit informal written bids or quotations from prospective vendors by written request, by telephone or by electronic data interchange.~~
- Quotations and written informal bids shall be submitted to the requestor who shall keep a record of the quotations, bids and open market orders as specified in the *Local Government Records Management Guidelines* after the submission or placing of the order. This record shall be kept open for public inspection. If the requestor is unable to receive at least three written bids or quotations, the list of vendors solicited but declined to provide a bid/quote or were unresponsive should be included in this record.
- Award shall be to the lowest responsible bidder.
- Informal bids, offers and quotations may be rejected when in the best interest of the C~~c~~ity to do so.

Exceptions to bidding: The informal/formal bid process may be bypassed in the following instances:

1. In cases of emergency. An emergency is defined as "an unforeseen circumstance or combination of circumstances calling for immediate action to procure materials, supplies, equipment or services in order to make repairs, safeguard lives or property, or maintain public health or welfare, as a result of extraordinary conditions created by war, disease, weather, fire or other catastrophic or unforeseen occurrence, or imminent or actual failure of any plant, equipment, structure, street, or public work" (3.20.015). The Emergency Justification Form must be approved by the City Manager or their designee, whenever possible, prior to any purchase. If the purchase exceeds $30,000, immediately following the emergency, the appropriate Department Director shall prepare an agenda report to Council explaining the emergency and the items purchased.
2. When the commodity can be obtained from only one vendor due to:
    a. Product standardization by resolution of the C~~c~~ity C~~c~~ouncil;
    b. Need for branded replacement parts or supplies for equipment of like brand;
    c. When the City Council determines that the purchase or method of purchase would be in the best interest of the C~~c~~ity (3.20.070).
    Unless already authorized by resolution, any purchase over $8~~6~~0,000 for this exception must be authorized by City Council.
3. When the professional service contract is for one of the following services:
    a. Legal defense, legal advice, or legal services;

b. Architectural and engineering services, including but not limited to construction management, aerial photography, laboratory and material testing services;
c. Accounting and financial services;
d. Real estate appraisals;
e. Transportation service consultants;
f. Safety, environmental or hazardous material consultants;
g. Workshops, seminars and conferences;
h. Computer consulting services.
Contracts for the above services shall be awarded on the basis of professional qualifications and experience, quality of service, past performance and negotiated prices (3.20.075). Contract awards over $8~~6~~0,000 for this exception must be approved by City Council.

4. When there exists other governmental contracts that are competitively bid (such as State Contracts, DGS, WSCA, Sourcewell, OMNIA Partners, NJPA) by another California public agency. Purchases over $8~~6~~0,000 for this exception require~~s~~ approval by resolution of the City Council (3.20.045).

PROCUREMENT/PAYMENT METHODS

Purchase Order:

The Purchase Order (PO) is the main source and preferred method of encumbering and procuring materials over $10,000 and one-time services. The PO is used to communicate to a vendor the City's terms and conditions, authorizes an encumbrance of City funds and is a contractual agreement to order goods and services. The PO is used to process payment and track expenditures in the City's Financial System (MUNIS). POs for material purchases under $10,000 are permitted if requested by the vendor.

Blanket/open purchase orders may be utilized when the specific purchasing requirements are not known at the time of purchase. For goods, blanket purchase orders are good for recurring expenses such as office supplies, materials, parts, and small equipment where specific items and quantities are determined on an as-needed basis. For services, blanket purchase orders are good for smaller, recurring on-demand services like specialized equipment repair. Blanket purchase orders follow the same threshold limits for competitive procurements as all other goods and services. Similarly, their renewal provisions are the same as with other procurement methods.

Important to our procurement process is the system of encumbrance accounting, which helps D~~d~~epartments and Finance control D~~d~~epartment spending by knowing what amounts have been committed prior to the actual invoicing and payment of services. When a D~~d~~epartment makes a verbal commitment with a vendor and does not issue a purchase requisition and a purchase order is not created, it circumvents the entire budgetary control process. Verbal commitments with a vendor and the absence of a purchase order is not an acceptable practice. Obtaining a purchase order from the purchasing processes in Munis is the main method of encumbering City funds.

Accounts Payable will pay approved vendor invoices with an appropriate and valid purchase order number issued from Munis. Invoices without an authorized purchase order may be returned to the D~~d~~epartment or vendor unpaid.

The City of Lodi has implemented a three-way match process in the Munis system. The requisition/purchase order must match the receipt of goods record which must match the vendor invoice. Any deviation from a three-way match will require a valid change order to be entered and approved in the Munis system. Invoices that do not conform to the three-way match will be returned to the D~~d~~epartment or vendor unpaid.

Professional Services Agreement: Services, as opposed to goods or materials, shall be procured using a professional services agreement (PSA) as created, revised as needed, by the City Attorney. A purchase order, with the appropriate terms and conditions, may be used when the services is of a one-time nature. Ongoing, recurring services shall be procured using a PSA.

Purchases of supplies and materials by vendors who supply their own terms and conditions instead of accepting the C~~c~~ity's terms and conditions provided with a materials purchase order must be procured by PSA. The C~~c~~ity A~~a~~ttorney's o~~o~~ffice must approve any vendor terms and conditions.

Credit/Procurement Card (CAL-Card): The issuance of procurement cards (CAL-Card) are authorized to specified staff by resolution of the City Council. The CAL-Card is used as a purchase and payment method used to procure budgeted low value goods, typically up to $10,000 and are subject to the provisions of the CAL-Card Use Policy. It may be used for higher value purchases when done so in accordance to the requirements of purchases greater than $10,000 as follows:

- CAL-C~~c~~ard holder submits authorization for temporary CAL-C~~c~~ard limit increase to CAL-Card administrator. Authorization is made by Department Director up to their authorized spending limits, City Manager up to $8~~6~~0,000, or resolution of the City Council.
- CAL-C~~c~~ard holder submits competitive bid summary or justification for exception to bids as authorized in the Purchasing System to the CAL-C~~c~~ard A~~a~~dministrator.
- CAL-C~~c~~ard holder submits approved insurance requirements if purchase is for a one-time service.
- All above documentation is to be included in the CAL-C~~c~~ard statement/transaction reconciliation process in Munis.
- CAL-C~~c~~ard A~~a~~dministrator will provide a temporary increase to the CAL-C~~c~~ard holder's limits (one-time purchase and monthly credit limit) to accommodate approved purchases over $10,000.

Cardholder and cardholder's approving official are responsible for proper use of the CAL-C~~c~~ard program. See the CAL-Card Handbook, posted on the City's intranet, for policies and procedures.

Wire/Electronic Fund Transfer (EFT): A bank wire or an EFT is used as a limited payment method for transactions with large dollar amounts which are time sensitive. Types of payments which are routinely processed by means of bank wire or EFT are debt service payments, the purchase of securities, payroll expenses (Federal, State taxes, retirement, medical premiums, employee contributions to various entities, etc).

Section II
GENERAL SUPPLIES, MATERIALS AND EQUIPMENT

PURPOSE

Provide guidelines for the purchase of general supplies, materials and equipment. Supplies, materials and equipment shall consist of any and all articles or things which shall be furnished to or used by any D~~d~~epartment.

In instances where goods and services are purchased together from one vendor, this section shall only apply if the predominant portion of the purchase is goods. (For example, a purchase of equipment for $3,000 with a $300 installation fee would be covered under this section of the policy. A repair of equipment with $3,000 in labor and $300 in parts would be covered under Section III General Trade Services).

INFORMAL/UNSEALED QUOTES

Material/supply purchases exceeding $8~~6~~0,000 must be awarded by the City Council.

Informal bidding should be used to assure the most competitive price is received for an item, while avoiding the additional time and expense involved in formal bidding.

The Department/Division should make every reasonable attempt to obtain at least three quotes for all purchases between $10,000 and $8~~6~~0,000. However, it is understood that at times it is neither practical nor cost effective to continue soliciting quotes until three quotes are received. In the event that three viable quotes are not received, the D~~d~~ivision shall document what steps were taken to obtain quotes, any vendors contacted that declined to bid, and, if applicable, why it is not practical to receive three quotes.

Purchases of supplies, equipment, contractual services and sales of personal property of an estimated value in the amount of the C~~c~~ity M~~m~~anager's contract authority as defined by Lodi Municipal Code section 2.12.060(T) or less may be made in the open market without observing the formal contract procedure prescribed by section LMC 3.20.100.

A. Minimum Number of Informal Bids or Quotations. Open market purchases shall, wherever possible, be based on at least three informal bids or quotations, and shall be awarded to the lowest responsible bidder.

B. Request for Quotations. The purchasing officer or purchasing authority shall solicit informal written bids or quotations from prospective vendors by written request, by telephone or by electronic data interchange. Quotations or informal bids shall be in writing for amounts greater than ten thousand dollars.

C. Quotations and written informal bids shall be submitted to the requestor, who shall keep a record of all quotations, bids, and open market orders for a period of one year after the submission of quotations or the placing of orders. This record, while so kept, shall be open to public inspection.

D. The P~~p~~urchasing O~~o~~fficer or purchasing authority may reject any and all informal bids, offers and quotations when, in his or her discretion, it shall be in the best interest of the C~~c~~ity to do so.

Public works projects informal bidding procedures will be consistent with Lodi Municipal Code section 3.20.105:

A. Informal Bid Procedures. Public projects, as defined by the Public Construction Cost Accounting Act (Public Contract Code §§ 22000, et seq.) and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

B. Contractor's List. The agency shall comply with the requirements of Public Contract Code Section 22034.

C. Notice Inviting Informal Bids. Where a public project is to be performed which is subject to the provisions of this [section], a notice inviting informal bids shall be circulated using one or both of the following alternatives:

1. Notices inviting informal bids may be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with section 3.20.105(B).
2. Notices inviting informal bids may be mailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the D~~d~~epartment/agency soliciting bids, provided however:

If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

Documentation: Quotes received must be documented to the satisfaction of the Purchasing Officer~~Budget Division~~. Ideally, documentation should include the name of the company bidding, the person giving the quote, items being quoted, the date and time of the contact, the amount quoted and any other relevant information.

Evaluating Quotes: The Department/Division shall evaluate the informal quotes received and determine the lowest most responsible quote. When evaluating quotes, please verify that like items are being evaluated (apples to apples). The City reserves the right to accept the quote which is in the best interest of the City. This means that the lowest priced quote may not be selected if a higher priced quote provides the overall best value to the C~~c~~ity.

Purchase Order: A purchase requisition detailing the vendor name, address, item(s) being purchased, total price including tax and shipping, and budget account to be charged shall be prepared in the MUNIS Financial System. A copy of the quotes/quote summary shall be attached to the purchase requisition. The Budget Division will review/approve the purchase requisition and convert the requisition to a Purchase Order. The Munis system will route the requisition to additional staff who are required to approve the requisition prior to conversion to P~~p~~urchase O~~o~~rder.

FORMAL/SEALED BIDS

Material/supply purchases exceeding $8~~6~~0,000 must be awarded by a resolution of the City Council. The formal bid process is governed by section 3.20.100 of the Lodi Municipal Code.

Formal bidding shall be used to assure all possible vendors are given the opportunity to bid on major City purchases, thereby assuring the City that it has received the most competitive price. The formal process generally takes more time and expense than informal bidding.

Bid Package: The initiating D~~d~~epartment shall prepare a bid form including detailed specifications for the item to be purchased. The following format is suggested for competitive bids:

1. Submission of Bids – Include date, time, and location of bid opening. Include a detailed list of the information the bid or proposal should contain. The public notice shall state that bids are to be received by the Purchasing Officer ~~Budget Manager~~ no later than the advertised bid opening time.
2. Questions – List the name, address, and telephone number of the person to be contacted concerning questions about the project.
3. Background – Provide as much background as necessary to give the bidder an understanding of the environment in which the job will be performed and to which the job relates.
4. Scope of work – Describe in detail the requirements for the job and detail specifications.
5. Desired project schedule – be as specific as possible.
6. Minimum and desirable qualifications – Be as specific as possible.
7. Performance Bond – Whether a performance bond is required and if so, the amount and form of bidder’s security.

Notice inviting Bids: The initiating D~~d~~epartment shall also prepare a notice inviting bids that includes the following:

1. A general description of the item to be purchased.
2. A statement indicating where bid package, specifications and bonding requirements can be obtained.
3. A statement specifying the date, time and place for the opening of the bid.

Bid Opening:

1. Sealed paper bids shall be submitted to the Purchasing Officer.~~Budget Manager.~~
2. Paper bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid.
3. Any bid received after the time specified in the notice shall be rejected.
4. When bidder’s security is required, it will be announced in the public notice inviting bids. The amount shall be determined at the time of preparation of the bid. It shall be in the form of cash, certified or cashier’s check, or bid bond made payable to the City of Lodi. When a bidder’s security is required, a bid shall not be considered unless one of the aforementioned forms of security accompanies the bid.

Rejection of Bids: The City reserves the right to reject any and all bids, to accept or reject any one or more items of a bid, or to waive any irregularities or informalities in the bids or the bidding process if to do so is deemed to best serve the interest of the City.

Determining Lowest Responsible Bidder: Award to bid shall be to the lowest responsive and responsible bidder. The City reserves the right to accept that bid which is in the best interest of the City. When selecting the recommended bidder the Department/Division will take into consideration:

1. Price
2. Ability, capacity, and skill, warrantee
3. Ability to meet time requirements
4. Character, integrity, and reputation
5. Previous vendor experience
6. Financial resources available for contract performance
7. Ability to provide future maintenance and service, if necessary

Awarding the Bid: Once the bids have been evaluated, the Department/Division hall prepare an agenda report to Council recommending the most responsive and responsible bidder. The Council shall then award the bid in a public meeting.

Purchase Order: A purchase requisition detailing the vendor name, address, item being purchased, total price including tax and shipping, and budget account to be charged shall be prepared in the MUNIS Financial System. A copy of the bid/bid summary shall be attached to the purchase requisition. The Budget Division will review/approve the purchase requisition and convert the requisition to a Purchase Order. The Munis system will route the requisition to additional staff who are required to approve the requisition prior to conversion to purchase order.

Change Orders: ~~Change orders to purchases orders are allowable up to $60,000 in aggregate purchase.~~ Change orders to purchase orders/contracts up to $80,000 in aggregate purchase can be approved by the City Manager. Change orders exceeding a $8~~6~~0,000 aggregate purchase must be brought to City Council for approval. Change orders are entered into the Munis system by the requesting D~~d~~epartment/D~~d~~ivision. The Munis system will route the change order to additional staff who are required to approve the requisition prior to being added to the purchase order. Once the change order has been made, the D~~d~~epartment/D~~d~~ivision must submit the updated order to the vendor.

Restrictions: Any purchase of supplies, materials, equipment or services contrary to the C~~c~~ity's Purchasing System Ordinance:

- Such purchases are void and not considered an obligation of the City.
- Invoices may be returned to the contractor/service provider unpaid.
- The D~~d~~epartment D~~d~~irector of the D~~d~~epartment ordering the unauthorized purchase may be held personally liable for the costs of the purchase or contract (3.20.140).

Section III
PROFESSIONAL SERVICES

PURPOSE

Provide guidelines for the purchase of professional services. Professional services are those activities performed by a consultant or firm who possesses a high degree of expertise in a particular profession. This would generally include (but not be limited to) architectural, landscape architectural, engineering, environmental, land surveying, construction project management, accounting/auditing, financial, legal, and other administrative services.

INFORMAL REQUEST FOR PROPOSAL OR REQUEST FOR QUALIFICATIONS

Professional service contracts exceeding $8~~6~~0,000 must be awarded by resolution of the City Council.

An informal Request for Proposal (RFP) or a Request for Qualifications (RFQ) process shall be used for any solicitation under $8~~6~~0,000, except those service exempted from bidding per Section I – General; *Exception to Bidding.* These professional service agreements shall have sufficient documentation of background analysis to support the contract. Informal solicitations should be used to assure quality services are received for a reasonable price.

The Department/Division shall strive, whenever possible, to solicit at least three qualifications/proposals in writing. It is important that the specifications are accurate and comprehensive.

Documentation:
Informal quotations must be documented to the satisfaction of the Purchasing Officer~~Budget Division~~. Documents should include:

1. The name of the company.
2. The person giving the quote.
3. The date and time the quotes were received.
4. Understanding of the required scope of services.
5. Specialized experience of the firm and its personnel relative to the required services.
6. References who can be contacted to verify past record of performance, i.e., completion of quality product, in a timely manner, and within budget constraints.
7. The capacity of the firm to perform the subject project within a required timeframe.
8. Estimated price.

Evaluating Informal RFP/RFQ:
The Department/Division Head or designee(s) shall select the consultant which, in their evaluation process, is the most qualified to perform the work. The evaluation and selection process shall be based upon the following considerations:

1. General quality and responsiveness to the request, including but not limited to:
   - Responsiveness to the terms, conditions, and items of performance;
   - Understanding~~Grasp~~ of the problem, work to be performed, and approach to be used
2. Organization and personnel making the proposal;
   - Evidence of good organizational management practices.

- Qualification of the personnel.
- Specialized experience of the firm and its personnel relative to the required services.
- References who can be contacted to verify past record of performance (i.e., completion of a quality product in a timely manner and within budget constraints).
- Previous consultant experience.
- The final condition of the firm.
- Capacity of the firm to perform the subject project within a required timeframe.

3. If appropriate, the price, in any of the following formats, may be considered.
    - Total price and price breakdown.
    - Price range.
    - Cost schedule.

Negotiation:
The Department Head or designee(s) shall discuss with the highest ranked firm(s) the requirements of the project, the scope of services needed to meet the requirements, and negotiate a reasonable fee/contract for the established work assignment.

Contract Procedure:
The City Clerk's office has prepared instructions and routing procedures for the contract process. These documents, including a fillable Contract Routing Slip, can be found on the City Clerk's intranet page. The Contract Routing Slip will guide the user of the needed items and timeline for any contracts needing Council authorization. Follow the guidelines set forth in the Contract Routing Slip. Below are items the D~~d~~epartments must include in the routing of their contracts.

- A Professional Services Agreement (PSA) or miscellaneous contract shall be prepared detailing the consultant's name, service being purchased, and total price of the service being purchased. Exhibits to the contract may include the scope of services, fee proposal, insurance requirements, and insurance certificate with any required endorsements. Do not make any revisions/additions to the standard PSA without written approval of the City Attorney's office. Three copies of the PSA or contract are to be included in the routing package. Departments are to obtain the signature of the vendor prior to routing.
- The issuing Department/Division will obtain a completed IRS form W-9 from the vendor.
- Proof of insurance in accordance with the contract shall be obtained. This includes an insurance certificate and any additional ensured endorsement. An insurance matrix and additional insurance requirements can be found on the Risk Management section of the C~~c~~ity's intranet site. The C~~c~~ity uses PINS Advantage to acquire vendor insurance certificates. Contact the Risk Manager's office for access to this online system.
- If the vendor is located in~~,~~ or performs services within C~~c~~ity limits or if vendor delivers products in company owned vehicles, a Business License is required.
- One original copy of the executed contract shall be returned to the vendor, the issuing Department shall keep the second copy and the third copy shall remain in the City Clerk's Office.
- The Department submits a copy of the contract to Accounts Payable for entry into the contracts module of the Munis system. The contract will be entered as either a "not to exceed" amount or an encumbered contract.
    - A "not to exceed" contract uses the budget controls set up on the account number used in Munis and no encumbrance is made. The contract expires upon the date

specified in the contract or when the "not to exceed" value has been reached. Extending the contract would require an addendum to the contract.
  - An encumbered contract must have available budget to be encumbered. Capital project contracts must be encumbered.

Renewals:
Contracts for ongoing services may include annual renewal provisions for up to four additional years if specified in the contract. However, all contracts that exceed $8~~6~~0,000 in overall contract costs must be approved by resolution of the City Council.

Contracts for maintenance agreements including software programs must go to City Council for approval at such time that the overall contract costs reach and exceed $80,000 in overall contract costs. Purchase Orders are an approved way to enter into maintenance agreements under $80,000 as long as the vendor and software program are approved by the Information Technology Manager. They must also provide insurance with limits and submissions approved by the Risk Manager.

Change Orders:
The City Manager is authorized to issue change orders for changes or additions to the original purchase that result in no more than a $8~~6~~0,000 aggregate cost. Change orders in excess of the $8~~6~~0,000 aggregate change in purchase price shall be brought to the City Council for approval. For purchases over $8~~6~~0,000, staff may include a change order provision in the original award brought before City Council. Change orders in excess of any City Council authorized amounts will require additional City Council approval.

FORMAL REQUEST FOR PROPOSAL OR REQUEST FOR QUALIFICATIONS

Professional service contracts exceeding $8~~6~~0,000 must be awarded by the City Council.

A Formal sealed Request for Proposal (RFP) or a Request for Qualifications (RFQ) process shall be used, for any solicitation exceeding $8~~6~~0,000, thereby assuring the City that it has engaged the most qualified consultant available for the engagement. The formal solicitation process generally takes more time and expense than informal solicitations of qualifications. Formal bidding exceptions are outlined in Section INFORMAL/UNSEALED QUOTES of this policy and in Sections 3.20.100 and 3.20.105 of the Lodi Municipal Code.

The Formal Request for Proposal or Request for Qualifications shall include:

Developing the RFP or RFQ:
Because RFP's and RFQ's ask for a subjective product, they should contain the greatest detail possible, and may include the following:

1. A precise description of the problem or objective.
2. The services to be performed.
3. The product to be provided.
4. The anticipated time schedule for:
   - Submittal of RFP/RFQ (date and time).

- Any pre-proposal conference (date, time and location).
- Review and evaluation of the proposals.
- Award of the contract.
- Commencement of the work on the project.
- Completion date.

5. Evaluation factors and the relative importance of each.
6. Expectations or limitations on the part of the City:
   - The format, form and quantity of any expected reports.
   - The extent/nature of assistance/cooperation available from the City.
7. Expected content of the RFP/RFQ, including:
   - The overall description of techniques to be used.
   - Listing of similar services provided to other clients.
   - Listing of available references to contact.
   - Description and qualifications of assigned lead and supporting personnel.
   - Time and staff expected to be expended.
   - Facilities and equipment to be used.
   - Portion of contract to be performed by sub-contractors.
   - Subcontractors / Sub consultants qualifications.
   - Cost, in summary and total, and desired method of payment. The RFP/RFQ for services may, but is not required to; state the amount budgeted for the service.
8. Contractual requirements including, but not limited to:
   - Prohibition against assignment.
   - Indemnification.
   - Insurance requirements.
   - Warranties.
   - Compliance with federal, state and City laws, rules and regulations.
   - Compliance with any grant related regulations.
   - Sample contract.

Issuing the RFP/RFQ:

1. To ensure maximum exposure and competition, the issuing D~~d~~epartment shall prepare and submit the RFP/RFQ documents to the City's online bid system. The soliciting D~~d~~epartment may ~~also~~ contact known vendors to solicit formal proposals; however, this should not be done in lieu of submitting documents through the City's online bid system.~~.~~
2. A reasonable length of time between solicitations and closing dates must be allowed to provide potential respondents time for preparation in accordance with the complexity, the size of the project, and the scope of the advertising.
3. City staff may conduct conferences to explain the requirements of the project. A sufficient amount of time should be allowed after the RFP/RFQ has been issued to allow potential respondents to become familiar with the project. Any clarification or changes required to the RFP/RFQ, as a result of the conference, shall be added as a written amendment. A summary of the conference shall be provided to all prospective respondents receiving the request.
4. Amendments should be used to make any changes in quantities descriptions, schedules, or to correct defects or ambiguities in the original RFP/RFQ. Amendments are provided to ensure that all potential respondents are furnished with the same information with which to prepare

proposals. Amendments to the RFP/RFQ shall be identified as such and shall require acknowledgment as such by firms receiving the RFP/RFQ within a reasonable time period before the closing date. If the time and date established for the receipt of proposals does not allow sufficient time for consideration and changes, the time and date will be modified by amendment.

Proposal Opening:

1. Proposals shall be submitted to the Purchasing Officer ~~Budget Manager~~ and shall be clearly identified with the Proposal on the envelope.
2. Any proposal received after the time specified in the RFP/RFQ shall be returned unopened.
3. Respondents may modify or withdraw their proposals prior to the established closing date and time, without penalty. However, any modifications submitted after the established closing date and time will not be accepted. Such modifications will be returned to the respondent, unopened.
4. Proposals and modifications shall be shown only to the evaluation committee personnel, the City Clerk or his/her designee, the Department Head and the Purchasing Officer~~Budget Manager~~ until a recommendation is made to Council or all proposals have been rejected.

Rejection of Proposals:

The City reserves the right to reject any and all proposals, to accept or reject any one or more items of a proposal, or to waive any irregularities or informalities in the proposal or the RFP/RFQ process if to do so is deemed to best serve the interests of the City.

Evaluation Factors and Method:

1. Because unique services are requested, cost is not considered the primary selection criteria.
   - General quality and responsiveness of the proposal, including but not limited to:
     - o Responsiveness to the terms, conditions, and items of performance.~~;~~
     - o Completeness and thoroughness of the proposal.~~;~~
     - o Understanding~~Grasp of the problem,~~ work to be performed, and approach to be used.
   - Organization and personnel making the proposal:
     - o Evidence of good organizational and management practices.
     - o Qualification of the personnel.
     - o Specialized experience of the firm and its personnel relative to the required services.
     - o References who can be contacted to verify past record of performance, i.e., completion of a quality product, in a timely manner, and within budget constraints.
     - o The financial condition of the firm.
     - o Capacity of the firm to perform the subject project within a required time frame.
   - If appropriate, the price, in any of the following formats, may be considered:~~.~~
     - o Total price and price breakdown.
     - o Price range.
     - o Cost schedule.
2. A Selection Committee shall be formed to evaluate the submitted data and determine the consultants that should receive further consideration. The Committee shall be appointed by the issuing D~~d~~epartment and may consist of more than one D~~d~~epartment.
3. The Selection Committee may choose to interview all of the responding consultants, only the top few ranking consultants or to not perform interviews.

4. After the interviews (if applicable), the Selection Committee shall rank the consultants based on their proposals, interviews, and references.

On-Call (Ongoing) Professional Services:

1. In some instances, it is in the best interest of the City to have on-call contracts with multiple consultants for the same or very similar services (i.e. services that can be defined as to scope of work but not as to required events such as soils testing, contract building inspection services, architectural services, etc.) These services would best be handled by establishing an eligibility list and by entering into annual on-call processional service contracts.
2. The process for selecting firms for annual ongoing professional service contracts shall be generally the same as for other professional services contracts. However, multiple firms may be awarded an on-call contract based on the RFP/RFQ process and may be placed on the eligibility list. Additional firms/individuals may also be awarded contracts and placed on the eligibility list at a later date, using the RFP/RFQ process without impacting contracts currently in place.
3. As events occur and need arises, work may be assigned to the consultants on the eligibility list. The Department Head shall make a reasonable attempt to rotate work between consultants subject to availability and special needs or by soliciting proposals from the consultants on the eligibility list.

Negotiation:
The Department Head or designee(s) shall discuss with the highest ranked firm(s) the requirements of the project, the scope of services needed to meet the requirements, and negotiate a reasonable fee/contract for the established work assignment.

Awarding the Contract:
The Department Head/Division Head shall prepare an agenda report to City Council recommending the most responsive consultant. The Council shall then award the contract in a public meeting. All contracts exceeding $8~~6~~0,000 must be awarded by resolution of the City Council. Otherwise:

- ~~1.~~ Such purchases are void and not considered an obligation of the City.
- Invoices may be returned to the contractor/service provider unpaid.
- The D~~d~~epartment D~~d~~irector of the D~~d~~epartment ordering the unauthorized purchase may be held personally liable for the costs of the purchase or contract (3.20.140)

Contract Procedure:
The City Clerk's office has prepared instructions and routing procedures for the contract process. These documents, including a fillable Contract Routing Slip, can be found on the City Clerk's intranet page. The Contract Routing Slip will guide the user of the needed items and timeline for any contracts needing Council authorization. Follow the guidelines set forth in the Contract Routing Slip. Below are items the D~~d~~epartments must include in the routing of their contracts.

- A Professional Services Agreement (PSA) or miscellaneous contract shall be prepared detailing the consultant's name, service being purchased, and total price of the service being purchased. Exhibits to the contract may include the scope of services, fee proposal, insurance requirements, and insurance certificate with any required endorsements. Do not make any revisions/additions to the standard PSA without written approval of the City Attorney's office. Three copies of the PSA or contract are to be included in the routing package. Departments are to obtain the signature of the vendor prior to routing.

- The issuing Department/Division will obtain a completed IRS form W-9 from the vendor.
- Proof of insurance in accordance with the contract shall be obtained. This includes an insurance certificate and any additional ensured endorsement. An insurance matrix and additional insurance requirements can be found on the Risk Management section of the C~~c~~ity's intranet site. The C~~c~~ity uses PINS Advantage to acquire vendor insurance certificates. Contact the Risk Manager's office for access to this online system.
- If the vendor is located in~~,~~ or performs services within C~~c~~ity limits or if vendor delivers products in company owned vehicles, a Business License is required.
- One original copy of the executed contract shall be returned to the vendor, the issuing Department shall keep the second copy and the third copy shall remain in the City Clerk's o~~O~~ffice.
- The Department submits a copy of the contract to Accounts Payable for entry into the contracts module of the Munis system. The contract will be entered as either a "not to exceed" amount or an encumbered contract.
    - A "not to exceed" contract uses the budget controls set up on the account number used in Munis and no encumbrance is made. The contract expires upon the date specified in the contract or when the "not to exceed" value has been reached. Extending the contract would require an addendum to the contract.
    - An encumbered contract must have available budget to be encumbered. Capital project contracts must be encumbered.

Renewals:
Contracts for ongoing services may include annual renewal provisions for up to four additional years. However, all contracts that exceed $8~~6~~0,000 in overall contract amount must be approved by the City Council.

Contracts for maintenance agreements including software programs must go to City Council for approval at such time that the overall contract costs reach and exceed $80,000 in overall contract costs. Purchase Orders are an approved way to enter into maintenance agreements under $80,000 as long as the vendor and software program are approved by the Information Technology Manager. They must also provide insurance with limits and submissions approved by the Risk Manager.

Change Orders:
The City Manager is authorized to issue change orders for changes or additions to the original purchase that result in less than $8~~6~~0,000 aggregate change in purchase price. Change orders in excess of the $8~~6~~0,000 aggregate change in purchase price shall be brought to the City Council for approval. For purchases over $8~~6~~0,000, staff may include a change order provision in the original award brought before City Council. Change orders in excess of any City Council authorized amounts will require additional City Council approval

Section IV
Purchases with Federal Grant Funds

The following section is being added to the Purchasing Policy to establish standards for the procurement of supplies, equipment, real property and other services as required by 2 CFR 200.318 through 200.326 to comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards commonly called "Uniform Guidance".

When using federal grant funds, follow applicable state statutes and rules and local policies only to the extent that those statutes, rules, and policies do not conflict with the Uniform Administrative Requirements (UAR) outlined below. 2 CFR 200.318(a)

Contract performance and payments must be monitored during the course of the contract. 2 CFR 200.318(b).

Written standards of conduct and Conflict of Interest:
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 [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

- the employee, officer, or agent;
- an immediate family member of the employee, officer, or agent; or
- the partner of the employee, officer, or agent

has a financial or other interest in or will receive a tangible personal benefit from a firm considered for the contract. Officers, employees, and agents must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. 2 CFR 200.318(c)(1)

Before starting a procurement process:
Review all proposed procurements to avoid unnecessary/duplicative purchases of equipment, supplies, and services. Consider whether it will it save money/time to consolidate procurements; if so, consolidate. If relevant, consider whether a lease or a purchase is the most economical approach (and document how you came to your decision). 2 CFR 200.318(d).

Look for state or local intergovernmental agreements (such as competitive bidding group purchasing programs, state term contracts, GSA contracts, or formal intergovernmental agreements—but get awarding agency approval before using one of those agreements. 2 CFR 200.318(e).

<u>Purchasing Guidelines</u>

Documentation:
Keep records showing:

- Basis for vendor selection;
- Documentation of lack of competition when competitive bids or offers are not obtained;
- Why you chose a specific procurement method;
- The basis for your award (why did you select the contractor or vendor you selected? Why did you reject the others?);
- The basis for the contract price; and

- Any other significant decisions that were a part of the procurement process.

Award only to "responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement." In determining which contractors are responsible, you must consider "matters such as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources." 2 CFR 200.318(h). (Note: This means that your solicitation documents must ask for information that will allow you to assess whether a contractor is "responsible.")

Keep records to detail the history of each procurement. These records must include, at least, records showing your rationale for (1) the method of procurement, (2) the selection of contract type, (3) contractor selection or rejection, and (4) the basis for the contract price. 2 CFR 200.318(i)

Prohibit awarding time and materials type contracts unless (1) you have determined that no other contract is suitable and (2) the contract includes a ceiling price that the contractor exceeds at its own risk. The UAR defines a time and materials type contract as "a contract whose cost to a non-Federal entity is the sum of: (1) the actual cost of materials; and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit." 2 CFR 200.318(j). For the purposes of this policy, the term "non-Federal Entity" means the City of Lodi.

Restricting competition. The following actions on procurements funded with federal grants are prohibited:

- Allowing contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals to compete for such procurements;
- Placing unreasonable requirements on firms for them to qualify to do business (if you're not sure if a requirement is unreasonable, ask the Federal awarding agency);
- Requiring unnecessary experience or excessive bonding;
- Permitting noncompetitive pricing practices between companies;
- Awarding contracts to consultants on "retainer" contracts; Permitting organizational conflicts of interest;
- Specifying a brand name product without permitting an equal product to be offered, and without describing the performance requirements that must be met for a product to qualify as an equal;
- Acting arbitrarily in awarding contracts. 2 CFR 200.319(a).

Prohibit awards based on local geographic preferences, except where applicable Federal statutes expressly mandate or encourage geographic preference. However, geographic location may be a selection criterion~~a~~ when awarding contracts for architectural or engineering services, provided that using such criteria "leaves an appropriate number of qualified firms" to compete for the work, "given the nature and size of the project." 2 CFR 200.319(b).

All solicitations must identify (1) all requirements which the offerors must fulfill and (2) all other factors to be used in evaluating bids or proposals. 2 CFR 200.319(c)

If you use prequalified lists of entities or products when procuring goods or services, make sure those lists are "current and include enough qualified sources to ensure maximum open and free

competition," and do not preclude other potential entities or products from participating in the solicitation. 2 CFR 200.319(d)~~.~~

Methods of Procurement to be Followed

Procurement by sealed bids require formal advertising. Bids are publicly solicited (Post to the online bid notification system) and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction.

In order for sealed bidding to be feasible, the following conditions should be present:

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

If sealed bids are used, the following requirements apply:

- The invitation for bids must be publicly advertised, providing suppliers sufficient response time prior to the date set for opening the bids;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- The bids must be opened publicly at the time and place prescribed in the invitation for bids;
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- Any or all bids may be rejected if there is a sound documented reason. 2 CFR 200.320(c)

Procurement by competitive proposals. The technique of competitive proposals is normally conducted 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. If this method is used, the following requirements apply:

- 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;
- Proposals must be solicited from an adequate number of qualified sources;
- The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase

other types of services though A/E firms are a potential source to perform the proposed effort. 2 CFR 200.320(d)

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- After solicitation of a number of sources, competition is determined inadequate. 2 CFR 200.320(f)

Take certain steps to assure that minority firms and women's business enterprises are used when possible. These steps are:

- Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- Establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises;
- Use the services and assistance of the Small Business Administration (www.sba.gov) and the Minority Business Development Agency of the Department of Commerce (www.mbda.gov); and
- Require prime contractors to take the same steps listed above. 2 CFR 200.321

Contract Cost and Price

Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold ($150,000), including contract modifications. Make the Independent Cost Estimates (ICE) before receiving bids or proposals. 2 CFR 200.323(a)

Negotiate profit as a separate element of the price (1) for each contract in which there is no price competition and (2) in all cases where cost analysis is performed. 2 CFR 200.323(b)

A prohibition on using "cost plus a percentage of cost" or "percentage of construction cost" methods of contracting. 2 CFR 200.323(d)

Federal Awarding Agency Review

The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency believes such review is needed to ensure that the item 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 non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. 2 CFR 200.324(a)

The non-Federal entity must make available upon request, for the Federal awarding agency pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- The procurement is expected to exceed the Simplified Acquisition Threshold ($150,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold. 2 CFR 200.324(b)

The non-Federal entity is exempt from the pre-procurement review in the above paragraph if the Federal awarding agency determines that its procurement systems comply with the standards of this part.

- The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review. 2 CFR 200.324(c)

Bonding Requirements

For construction or facility improvement contracts or sub-contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency may accept the bonding policy and requirements of the agency provided that the Federal awarding agency has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. 2CFR 200.325(a);

- 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. 2CFR 200.325(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. 2CFR 200.325(c).

Contracting Provisions

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A)Remedies: Contracts for more than the simplified acquisition threshold currently set at$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 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.

(B)Termination: All contracts in excess of $30,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be ~~effected~~affected and the basis for settlement.

(C)Equal Employment Opportunity: Except as otherwise provided under41 CFR Part60, 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 under41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR12319, 12935, 3 CFR Part,1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246Relating to Equal Employment Opportunity," and implementing regulations at41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D)Davis-Bacon Act, as amended: (40U.S.C. 3141-3148).When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40U.S.C. 3141-3144) 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 non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contractor subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the **Copeland "Anti-Kickback" Act**: (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 non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act: (40 U.S.C. 3701- 3708). Where applicable, 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.

(F) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act: (42 U.S.C. 7401- 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension: (Executive Orders 12549 and 12689) – Verify that a vendor is not debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. Confirm and document that vendors are not on the federal government’s Excluded Party list found at www.sam.gov.

(I) Byrd Anti-Lobbying Amendment: (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not use, 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 U.S.C. 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.