

City of Charlotte Uniform Guidance Procurement Policy

I. Objective

The objective of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction and repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

II. Policy

- A. **Application of Policy.** This policy applies to contracts for construction or repair or for the procurement of goods or services that are funded in whole or in part by federal funds, direct or reimbursed, including contracts under grants and loans where the City is a sub-grantee or sub-recipient of federal funds (collectively, “**Federal Contracts**”), except to the extent the federal funding is not subject to the Uniform Guidance codified in 2 C.F. R. Part 200.

All Federal Contracts are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The requirements of this Policy also apply to any subrecipient of federal funds. City departments may adopt additional policies to the extent required by a particular federal agency or federal grant, and in the event of a conflict the departmental policies shall take precedence over this Policy. The City department that received the federal funding for the Federal Contract is responsible for ensuring compliance with this Policy and all other grant requirements.

- B. **Compliance with Federal Law.** All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The City will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the City have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
- C. **Approval and Modification.** The procedures and requirements contained in this Policy are administrative and may be changed by the City’s **Procurement Services Director** as necessary to comply with state and federal law.

III. General Procurement Standards and Procedures:

The following standards and procedures apply to all Federal Contract solicitations:

- A. Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. City departments should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other City departments and/or agencies that have similar needs to consolidate procurements and services to obtain better pricing.
- B. Cost Reduction.** City departments are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. City departments are further encouraged to use value engineering clauses in Federal Contracts for construction or repair that are of sufficient size to offer reasonable opportunities for cost reductions.
- C. Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders or proposers must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that unduly restrict competition.
- D. Notice of Federal Funding.** All bid solicitations for Federal Contracts must acknowledge the use of federal funding. In addition, all prospective bidders or proposers must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.
- E. Compliance by Contractors.** All Federal Contract solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.
- F. Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how the reach the required result to the Federal Contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and “or equal” must be included in the description.
- G. Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.
- H. MWSBE Participation.** For all Federal Contract procurements that equal or exceed the Micro-Purchase Threshold (currently \$3,500), the City department responsible for the solicitation must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must 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 potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (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 paragraphs (1) through (5) of this Section.

- I. **Documentation.** City departments must maintain records detailing the history of all Federal Contract procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, Federal Contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase orders, and the Federal Contract. All documentation relating to the award of any Federal Contract must be made available to the granting agency upon request.
- J. **Cost Estimate.** For all Federal Contract procurements that are expected to equal or exceed the Simplified Acquisition Threshold as defined in Article V (currently \$150,000), the City department responsible for the procurement shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction or repair contracts may be developed by the project designer.

Profit must be negotiated as a separate element of the price for each Federal 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.

- K. **Open Competition.** Solicitations shall be prepared and conducted in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for "or equal" products, or other unnecessary requirements that have the effect of restricting competition.

- L. Geographic Preference.** No geographic preferences may be imposed in awarding Federal Contracts except to the extent permitted by federal law.
- M. Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such procurements.
- N. Prequalification.** All lists of prequalified bidders must be kept current and must include enough qualified sources to ensure maximum open and free competition. Potential bidders shall not be precluded from qualifying during the solicitation period.
- O. City Council Approval.** Unless otherwise Council approval for a Federal Contract is required by this Policy, or by federal or state law, the thresholds established by City Council from time to time will determine when City Council approval for a Federal Contract is required.
- P. Procurement of Recovered Materials.** The City and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

IV. Requirements Applicable to All Federal Contracts

All Federal Contracts will comply with the following requirements:

- A. Contract Award.** Federal Contracts shall be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the 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. Purchase Contracts and Construction Contracts that exceed the Micro-Purchase Threshold (as defined in Article V of this Policy) will be awarded to the lowest responsive, responsible bidder.
- B. Fixed Price.** Federal Contract solicitations must state that bidders and proposers shall submit bids and proposals on a fixed price basis and that the Federal Contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost Federal Contracts are prohibited. Time and materials Federal Contracts will not

be used unless no other form of contract is suitable and the Federal Contract includes a “not to exceed” amount. A time and materials Federal Contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds. Additionally, if a time and materials Federal Contract is awarded the City department administering the contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- C. **No Evasion.** No Federal Contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.
- D. **Contract Requirements.** All Federal Contracts shall be in writing, and shall include or incorporate by reference the provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II. Federal Contracts shall further include provisions to comply with 2 C.F.R 200.315 regarding intangible property and the federal government’s right to data produced under a Federal Contract.
- E. **Debarment.** No Federal Contract shall be awarded to a contractor included on the federally debarred bidder’s list.
- F. **Contractor Oversight.** The City department administering the Federal Contract must maintain oversight of the Federal Contract to ensure that contractor is performing in accordance with the Federal Contract terms, conditions, and specifications.

V. Specific Procurement Procedures

City departments shall comply with this Section in soliciting bids and proposals for Federal Contracts. Solicitation requirements depend on the type of Federal Contract, which types include:

- Contracts for construction or repair work (“**Construction Contracts**”);
- Contracts for the procurement of apparatus, supplies, materials or equipment (“**Purchase Contracts**”);
- Contracts for the procurement of architectural, engineering or surveying services (“**AES Contracts**”); and
- Contracts for the procurement of services other than A&E Contracts (“**Service Contracts**”).

Solicitation requirements also depend on the amount of the Federal Contract, determined by the following thresholds which are set and adjusted from time to time by the Federal Acquisition Regulation at 48 CFR Subpart 2.1:

- **Micro-Purchase Threshold** (currently \$3,500)
- **Simplified Acquisition Threshold** (currently \$150,000)

Also relevant to the type of solicitation method required is the formal bid threshold established by North Carolina law from time to time, either through G.S. §143-129 or special legislation relating to the City of Charlotte (the “NC Formal Bid Thresholds”). As of the date of this Policy, the NC Formal Bid Threshold for Purchase Contracts for the City is \$100,000, and the NC Formal Bid Threshold for Construction Contracts is \$500,000.

References to both the federal and state thresholds in this Policy shall mean the then current thresholds. The Procurement Services Division shall serve as a resource for other City departments in tracking and updating these thresholds as adjustments are made over time.

A. Micro-Purchase Procedure. Service Contracts, Purchase Contracts and Construction Contracts that do not exceed the Micro-Purchase Threshold (currently \$3,500) shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:

1. The Federal Contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, purchases must be distributed among qualified suppliers.

B. Small Purchase Procedure. Service Contracts, Purchase Contracts and Construction Contracts that exceed the Micro Purchase Threshold (currently \$3,500) but are less than the Simplified Acquisition Threshold (currently \$150,000) shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources. Note that the federal grantor agency may issue guidance interpreting what constitutes an “adequate number” of quotes.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321 (and as summarized in Article III, Section H).
3. Cost or price analysis is not required prior to soliciting bids.

Sealed Bid Procedure. Purchase Contracts and Construction Contracts that equal or exceed the lower of the Simplified Acquisition Threshold or the NC Formal Bid Threshold, shall be procured using a combination of the most restrictive requirements of the Uniform Guidance Sealed Bid Procedure (2 C.F.R. § 200.320(c)) and North Carolina formal bidding procedures (G.S. 143-129). The Sealed Bid Procedure must also be used for Service Contracts over the Simplified Acquisition Threshold when complete specifications are possible, a fixed price contract is feasible and selection can be made principally on price.

C. As of the date of this Policy, the Sealed Bid Procedure must be used for:

- Purchase Contracts of \$100,000 or more;
- Construction Contracts of \$150,000 or more;

- Service Contracts of \$150,000 or more that can be feasibly procured through the Sealed Bid Procedure.

The Sealed Bid Procedure requirements are:

1. Cost or price analysis is required prior to soliciting bids. (This cost estimate may be provided by the project designer.)
2. Complete specifications or purchase description must be made available to all bidders.
3. The Contract must be fixed price (lump sum or unit price).
4. The solicitation must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening, except to the extent electronic advertising has been authorized by City Council (and provided that for Construction Contracts that are less than the NC Formal Threshold formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to City Council the right to reject any or all bids only for sound documented reasons.
5. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321 (and as summarized in Article III, Section H).
6. Open bids at the public bid or proposal opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed, and a minimum of 2 bids must be received in order to open any bids. For Construction Contracts over the NC Formal Bid Threshold (currently \$500,000) the following additional requirements apply: (a) bids must be submitted in paper form, and (b) at least 3 bids must be received in order to open any bids.
7. Award to the lowest responsive, responsible bidder. Bids may be rejected only for sound documented reasons. 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.
8. For Construction Contracts, a 5% bid bond is required of all bidders. Additionally for Construction Contracts, performance and payment bonds of 100% of the Federal Contract price is required of the winning bidder.

Note: Construction Contracts involving a building costing \$300,000 and above must comply with the following additional requirements under state law:

1. Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).

3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).

D. Competitive Proposal Procedure. Service Contracts that equal or exceed the Simplified Acquisition Threshold (currently \$150,000) may be procured using the Uniform Guidance Competitive Proposal Procedure (2 C.F.R. § 200.320(d)) when complete specifications are not possible, a fixed price contract is not feasible or it is not in the best interest of the federally funded program to make the selection principally on price. The Competitive Proposal Procedure is generally used when conditions are not appropriate for the use of sealed bids.

The Competitive Proposal Procedure requirements are:

1. The Request for Proposals (RFP) must be publicized. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an adequate number of qualified firms.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321 (and as summarized in Article III, Section H).
3. Identify all evaluation factors and their relative importance in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award to the responsible proposer whose proposal is most advantageous to the program with price and other factors considered.

G. AES Contracts costing under \$150,000 shall be procured using the state “Mini-Brooks Act” requirements (G.S. 143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the City department responsible for the procurement.
4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully completed, repeat negotiations with the second-best qualified firm.
6. Award the Federal Contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.

H. AES Contracts costing \$150,000 or more shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify all evaluation factors and their relative importance in the RFQ.
4. Proposals must be solicited from an “adequate number of qualified sources.” Note that the individual federal grantor agency may issue guidance interpreting “adequate number.”
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the Federal Contract given the nature and size of the project.
8. Price cannot be a factor in the initial selection of the most qualified firm.
9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successfully completed, repeat negotiations with the second-best qualified firm.
10. Award the Federal Contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.

VI. Exceptions

Noncompetitive procurements are allowed **only** under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

- A. Sole Source:** when the item is available from only one source. The City department responsible for the solicitation shall document the justification for and lack of available competition for the item. A sole source Federal Contract must be approved by City Council.
- B. Public Exigency:** when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.
- C. Inadequate Competition:** when competition is determined to be inadequate after attempts to solicit bids from a number of sources.
- D. Federal Contract:** when the purchase is made from a Federal Contract available on the U.S. General Services Administration schedules of Federal Contracts.

- E. **Awarding Agency Approval:** with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the Federal Contract without competition is consistent with state law.