

**STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING**



TITLE		NUMBER
<b>STANDARD PROCUREMENT POLICY &amp; FEDERAL EMERGENCY CONTRACTING POLICY</b>		400-20-04
EFFECTIVE DATE	SUPERCEDES	PAGE COUNT:
<b>12/19/2020</b>	#400-12-06 Dated April 10, 2012	57

**Table of Contents**

**PART A – STANDARD PROCUREMENT POLICY ..... 2**

SECTION 1 – OVERVIEW ..... 2

SECTION 2 – DEFINITIONS ..... 7

SECTION 3 – ETHICAL STANDARDS AND STANDARDS OF CONDUCT ..... 12

SECTION 4 – PROCUREMENT PRACTICES ..... 17

SECTION 5 – FEDERAL AND GRANT FUNDING ..... 21

SECTION 6 – STRATEGIC SOURCE SELECTION ..... 33

SECTION 7 – PROCUREMENT THRESHOLDS ..... 34

SECTION 8 – PUBLIC WORKS ..... 36

SECTION 9 – COMPETITIVE BIDDING – EXEMPTIONS AND EXCLUSIONS ..... 40

**PART B – FEDERAL EMERGENCY CONTRACTING POLICY & PROCEDURES ..... 44**

SECTION 10 – EMERGENCY CONTRACTING OVERVIEW ..... 53

SECTION 11 – ETHICAL STANDARDS AND STANDARDS OF CONDUCT ..... 53

SECTION 12 – FEDERAL REQUIREMENTS ..... 53

SECTION 13 – FEDERAL EMERGENCY CONTRACTING REQUIREMENTS ..... 53

SECTION 14 – FEDERAL EMERGENCY PROCUREMENT PROCEDURES ..... 55

SECTION 15 – GENERAL POLICY REVISIONS ..... 56

SECTION 16 – RELATED POLICIES, ORDINANCES, RESOLUTIONS, AND OPERATING PROCEDURES ..... 56

SECTION 17 – RELATED FORMS PART A – BLUE SKY PROCUREMENTS ..... 57

SECTION 18 – RELATED FORMS PART A & B – FEDERALLY FUNDED PROCUREMENTS ..... 57

SECTION 19 – RELATED FORMS PART B – SPECIFIC TO FEDERAL EMERGENCIES ..... 57

## **PART A – STANDARD PROCUREMENT POLICY**

### **SECTION 1 – OVERVIEW**

#### **1.1 PURPOSE**

This procurement policy is intended to ensure, subject to applicable law, fair and equitable treatment of all persons involved in public purchasing with the City of Everett (City). The goal is to establish best practices in procurement to maximize the purchasing value of public funds, and to provide safeguards for maintaining a procurement system of quality and integrity. When used properly, this policy will enable the City to obtain needed goods and services efficiently and economically while supporting a responsive and responsible government.

The understanding and cooperation of all employees is essential for the City to maximize the value of each taxpayer dollar spent. This policy provides a sound foundation for City procurement methods.

This policy does not create any enforceable rights or causes of action in third parties and does not in any way limit the City's ability to procure goods and services in accordance with state and federal law.

#### **1.2 GOALS**

The City's contracting and purchasing goals are to:

- Provide uniformity and consistency in the City's purchasing practices to meet present and future needs
- Comply with legal and ethical requirements of public procurement to protect the City's reputation and preserve the public's trust
- Assure suppliers that impartial and equal treatment is afforded to all who conduct business with the City
- Provide City departments the required goods and services in a timely manner while maximizing the value of City resources
- Promote healthy business relationships through informed and fair purchasing practices while maintaining integrity and transparency

#### **1.3 APPLICABILITY**

Unless otherwise provided state law, City ordinance or other policy, this policy applies to expenditure of all funds for all City purchases and procurements of goods and services contained in the budget adopted by the City Council.

This Policy is presented into two parts.

**"Part A – Standard Procurement Policy"** applies to contracts and procurements awarded in the course of ordinary business and other contracts that the City does not anticipate will be funded in whole or in part with federal financial assistance. Awards made from Part A are procured

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

under “blue-sky” conditions; *i.e.*, not in direct response to a federally declared emergency or disaster. Nonetheless, these awards have the potential to be used or activated in a disaster situation. Accordingly, staff should carefully consider whether it is foreseeable that a purchase or task order could be issued under a pre-existing blue-sky contract to address disaster-related needs. If so, these blue-sky contracts and procurements should be treated as federal contracts and procured in compliance with the requirements provided in Part B. Use of a pre-existing contract that was not procured according to the procedures in Part B in response to a federally declared emergency or disaster may result in disallowance or de-obligation of costs otherwise eligible for federal financial assistance.

**“Part B – Federal Emergency Contracting Policy & Procedures”** applies to contracts and procurements that may be funded in whole or in part with federal financial emergency assistance, such as those awarded in response to a disaster, which has been, or which the City anticipates will be declared as such by the President of the United States. The requirements under Part B of this Policy are intended to be greater than or equal to those under Part A. If Part A contains more stringent requirements than Part B, the stricter requirement will apply to federally funded contracts.

### 1.4 GOVERNING LAWS

This policy is governed the City of Everett Charter, the Everett Municipal Code and ordinances and policies; relevant laws of the State of Washington; relevant federal laws, and any additional federal or grant requirements when applicable. When a conflict occurs, unless otherwise required by applicable law, the stricter of the law, rule or regulation, prevails.

#### 1.4.1 CITY OF EVERETT CHARTER

Per City of Everett Charter Section 4.13,

“The Council shall establish the procedures for making bids and letting contracts by ordinance not in conflict with other provisions of this charter and the laws of the State of Washington.”

#### 1.4.2 CONTRACTS AND DOCUMENTS – EXECUTION OF

Per City of Everett Charter Section 4.14,

“All written contracts, bonds and instruments of every kind and description to which the City shall be a party shall be approved as to form and legality by the City Attorney, and executed in the name of the City by the Mayor or, in accordance with written guidelines approved by Council, by his or her Chief Administrative Assistant or designated department head(s), and attested by the Clerk and when necessary, shall be acknowledged by such officers.” (Amended 11-5-96).

#### 1.4.3 ESTABLISHMENT OF DUTIES AND AUTHORITY

Purchase orders commit City funds for the acquisition of goods or services. In their capacity as City purchasing agents, only the Procurement Manager, Procurement Division Staff, and Buyers are authorized to issue and sign purchase orders on behalf of the City in accordance with applicable law and this policy.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 1.4.4 FEDERAL FINANCIAL ASSISTANCE

This Policy recognizes that contracts that are, or may be, funded in whole or in part using federal financial assistance (*e.g.*, grants or cooperative agreements) must also according to their terms be compliant with the procurement standards of the government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 C.F.R. § 200.317 through 200.326. Pursuant to 2 C.F.R. § 200.324(c)(2), the City of Everett self-certifies that this Policy is compliant with these requirements.

### 1.5 PROPER AUTHORIZATION

Only authorized individuals may obligate the City to acquire commodities. Individuals purchasing commodities on behalf of the City without proper authorization may be personally liable for the payment of the purchase to the supplier, the City, or both, and may be disciplined.

#### 1.5.1 TECHNOLOGY RESOURCES

The Information Technology Director or designee will approve purchase requests for commodities such as electronic data processing and telecommunication systems in a manner consistent with the Electronic Communications & Technology Resources Policy.

#### 1.5.2 VEHICLES

The Motor Vehicle Division Maintenance Manager or designee will approve purchase requests for vehicles and related equipment.

#### 1.5.3 PUBLIC COMMUNICATIONS

The Communications Director or designee will approve all purchase requests for printing, signage, and promotional items that are intended for distribution to the public.

#### 1.5.4 CHAIRS & ERGONOMIC EQUIPMENT

The Safety Division will approve all purchases of office chairs and other requested ergonomic equipment prior to purchase. The Safety Division may create a list of pre-authorized office equipment that fulfills ergonomic needs and may consult with individuals or departments for specialized needs.

### 1.6 SALE OR LEASE OF PERSONAL PROPERTY

Sale or lease of personal property is governed by EMC Chapter 3.88 (as may be amended), and City of Everett Charter Section 15.8, which states,

“In addition to the powers accorded the City under the laws and constitution of the state of Washington with respect to the ownership and disposition of property, the Council may by ordinance provide regulation for the sale or lease of City property.”

### 1.7 SURPLUS – SALE OF THE CITY’S PERSONAL PROPERTY

Sale of the City’s personal property is governed by EMC Chapter 3.88 (as may be amended), which establishes the procedures for the disposition of tangible personal property owned by the

## **STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING**

City of Everett that is not needed at present or in the foreseeable future or that is no longer of value or use to the City (also referred to as surplus property).

### **1.8 MONITORING AND CONTRACT COMPLIANCE**

The Procurement Division will be responsible and provide oversight for monitoring and evaluating compliance with this policy.

As applicable, the Procurement Division will ensure that suppliers perform in accordance with the terms, conditions, and specifications of the Procurement Division's contracts and purchase orders that the Procurement Division is responsible for.

### **1.9 COUNCIL AUTHORIZATION AND AWARD**

#### **1.9.1 FORMAL SOLICITATIONS**

Prior to release, City Council must approve the publication of any competitive solicitation, with an estimated annual cost of \$250,000 or greater, except projects using the Small Works Roster.

After a competitive process has been completed, contract award will be made by City Council for any competitively solicited contracts with an estimated or actual annual cost of \$250,000 or greater. The annual value includes all suppliers used when multiple awards are made from a single solicitation.

#### **1.9.2 INTERLOCAL COOPERATIVE AGREEMENTS**

All Interlocal Agreements, except for Cooperative Purchasing Agreements, must be approved by the City Council and signed by the Mayor. Cooperative Purchasing Agreements are hereby delegated to the Mayor for approval and signature.

#### **1.9.3 PURCHASES MADE FROM COMPETITIVELY AWARDED COOPERATIVE CONTRACTS**

Subject to state law, the City may purchase from other entities competitively solicited and awarded contracts via a cooperative purchasing agreement in lieu of soliciting on its own. These purchases will follow the same requirements and thresholds as provided in Section 1.9.1, Formal Solicitations.

#### **1.9.4 JOB ORDER CONTRACTING**

The original solicitation for Job Order Contracting will follow the Formal Solicitation process provided above. All resulting task orders under a Job Order Contract will be contracted with the issuance of a purchase order.

#### **1.9.5 SMALL WORKS ROSTER**

RCW 39.04.155 allows public entities to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property up to \$350,000 (or the current statutory limit provided in RCW 39.04.155). The statute does not require advertisement for any small works projects. Small Works Roster projects do not require City Council authorization prior to release or award.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 1.9.6 ARCHITECTURAL & ENGINEERING SERVICES AGREEMENTS

Per City of Everett Municipal Code 2.04.030(2),

“City Council shall approve all agreements for professional engineering or architectural services for the design of City improvements.”

This also applies to any agreement amendments. A “design of City improvement” is any engineering or architectural agreement that requires the service provider to provide stamped drawings.

Architectural and Engineering Services are governed by Section 7.5.

### 1.9.7 PROFESSIONAL OR SPECIAL PERSONAL SERVICES AGREEMENTS

Professional or Special Personal Services Agreements and Amendments that are not the result of a competitive solicitation and have an estimated or actual annual value greater than \$50,000 must be awarded or approved by City Council. The limit may be lowered on a case by case basis at the Mayor’s discretion or comprehensively by Mayoral Directive. See the definition for Special Personal Service in Section 2.

Architectural and Engineering Services are governed by Section 7.5.

### 1.9.8 INDEMNIFICATION

Any agreement or contract that contains an indemnification clause requiring the City to indemnify must be approved by City Council unless either (1) City Council has delegated that authority to the Mayor through previous action or (2) the City Attorney determines City Council approval is unnecessary.

### 1.9.9 CONTRACT AMENDMENTS AND CHANGE ORDERS

Contract Amendments will ordinarily be approved in the same fashion as the initial contract. If, City Council awards the initial contract, then City Council must approve any contract amendments. If the Mayor has the authority to award and sign the contract, the Mayor will award and sign any related contract amendments. However, Change Orders for public works projects are governed by EMC 3.80.050.

## **SECTION 2 – DEFINITIONS**

**Addendum:** a written change, addition, alteration, correction, or revision to a bid, proposal, purchase order, or contract document.

**Amendment:** an agreed addition to, deletion from, correction, or modification of a bid, proposal, or contract document.

**Annual Cost:** Like-Kind items will be considered as one purchase on an annual basis when determining which threshold applies.

**Architectural and Engineering Services:** services as defined by RCW Chapter 39.80 by an individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within Washington State. See also Section 7.5.

**Award:** the formal decision by the City after which the contract is signed. A contract is not formed until the City signs the contract.

**Bidder:** a business entity or individual who submits a bid in response to an Invitation for Bids (IFB), Request for Quotation (RFQ), or other formal solicitation type where price is the primary factor in the evaluation process for award.

**Bid Splitting:** disaggregating, or splitting, purchases solely for the purpose of getting individual purchases below bidding requirements.

**Blue Sky:** typical purchase conditions; i.e., not in direct response to a federally declared emergency or disaster. Blue Sky procurements have the potential to be utilized or activated in a disaster situation. Accordingly, personnel should carefully consider whether it is foreseeable that a purchase could be issued under a pre-existing, “blue sky” contract to address disaster-related needs. If so, the “blue sky” contracts should be treated as Federal contracts and procured in compliance with the requirements provided in Part B.

**Branded Promotional Items:** such items include but are not limited to postcards, pencils, shirts, hats, visors, and other similar items, all of which must be of nominal value. [RCW 69.50.585]

**Brand Specification:** The City may determine that a specific brand of equipment is necessary to meet operational needs. This means that there must be a valid reason why only one manufacturer’s equipment is necessary to meet the operational needs and why it cannot be adequately substituted by another manufacturer’s equipment is clearly documented. This is not the same as a sole source.

**City-Wide Aggregate Expenditure:** when considering which procurement threshold applies, Procurement will consider:

- City-wide aggregate spend for any commodity
- Previous fiscal year spend with a single supplier
- The total accumulated costs of all items that are designed or intended to be used in conjunction with each other unless these components are not available from a single supplier

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

**Commodity:** a general term for a product or service to fulfill a need or want, and references both goods and services.

**Competitive Bidding:** the process of inviting and obtaining bids from competing suppliers, by which an award is made to the lowest responsive bid from a responsible bidder who meets the written specifications. A valid competitive bidding process provides potential bidders with a fair opportunity to win that contract.

**Competitive Solicitation:** any solicitation, including Invitations for Bid (IFB), Requests for Proposal (RFP), Request for Quotation, or Requests for Qualifications (RFQ) in which Procurement has or will play a key role in seeking fair and open competition in compliance with 2 C.F.R. § 200.319 and other applicable law.

**Construction:** the process of using labor to build, alter, repair, improve, or demolish any structure, building or public improvement. This generally does not apply to routine maintenance, repair, or operation of existing structure, building or improvement.

**Consultant:** An independent person or company that possesses necessary qualifications that allow them to perform specialized advisory services, usually for a fee.

**Contract:** a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

**Cooperative Procurement:** when a public procurement official is authorized to collaborate with other public procurement officials for the conduct of a joint procurement using a single Invitation for Bid (IFB) or Request for Proposal (RFP) on behalf of each participating public entity where in doing so would leverage the benefits of volume purchases and create a demonstrable and substantial reduction of administrative time and expense. This will be completed through an Interlocal agreement.

**Cost Analysis:** the review and evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred. A cost analysis should be employed when price analysis is impractical or does not allow a purchaser to reach the conclusion that a price is fair and reasonable.

**Expected Cost:** the anticipated annual need for a commodity should be used to determine the appropriate threshold.

**Fair and Reasonable:** Price that is fair to both the buyer and seller (both parties). In federal contracting, a fair and reasonable price is subject to both statutory and regulatory limitations. Buyers and suppliers may have different perceptions on what price is fair.

- **To be fair** to the buyer, a price must be in line with the fair market value of the contract deliverable. To be fair to the supplier a price must be realistic in terms of the supplier's ability to satisfy the contract.
- A **reasonable price** is a price that a prudent and competent buyer would be willing to pay given available data on market conditions. Economic forces such as supply, demand, general economic conditions and competition change constantly. Hence, a price that is reasonable today may not be reasonable tomorrow.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

**Fair and Reasonable Determination:** Is a conclusion that the proposed price is fair to both parties, considering the quality, delivery and other factors. The basis for reaching the conclusion is found in the facts and information considered and analyzed by the buyer.

**Federal Award:** the federal financial assistance that a non-federal entity receives directly from a Federal awarding agency or indirectly through a pass-through entity. [2 C.F.R. § 200.38]

**Independent Government Cost Estimate (IGCE):** the U.S. government's estimate of costs that a contractor or recipient may incur in performing services and/or providing supplies to achieve the government's objectives. The purpose of an IGCE is to estimate the funds needed for the project to provide an objective basis for determining price reasonableness when a supplier responds to a solicitation.

**Interlocal Agreement:** an agreement between public agencies involving an exercise of governmental powers in a joint or cooperative undertaking. [Chapter 39.34 RCW]

**Invitation for Bid (IFB):** a procurement method used to solicit competitive sealed bid responses, sometimes called a formal bid, when price is the basis for award.

**Job Order Contract:** a contract in which the contractor agrees to a fixed period, indefinite quantity, indefinite delivery order contract that provides for the use of negotiated, definitive work orders for public works projects. [RCW 39.10.420-460]

**Life Cycle Cost:** the total cost of ownership over the lifespan of the asset. An analysis technique that takes into account operating, maintenance, the time value of money, disposal, and other associated costs of ownership as well as the residual value of the item.

**Like-Kind Items:** commodities such as tires, fuel, uniforms, furniture or other items that could be purchased in bulk or sporadically throughout the City's fiscal year. It is necessary to evaluate all purchase of like-kind items during the fiscal year to ensure that individual purchases, when combined, do not exceed the City's solicitation thresholds or for federally funded procurements, the federal acquisition thresholds if stricter than City policy.

**Nominal Value:** items of *de minimus* value given or received such as unsolicited tokens or awards of appreciation, advertising or promotional items for which no personal beneficial interest in the use or acquisition of the item exists; informational material related to the recipient's performance of official duties; food and beverages consumed at hosted receptions where attendance is related to official duties.

**Non-Federal Entity:** the City is a non-federal entity as defined 2 C.F.R. § 200.69.

**Petty Cash:** the purchase of incidental items, valued under two hundred dollars (\$200), may be made using petty cash in accordance with the City's current Petty Cash Policy, currently Policy 400-96-02.

**Piggyback:** a form of intergovernmental cooperative purchasing in which an entity will be extended the pricing and terms of a contract entered by another public entity. Generally, that entity will competitively award a contract that will include language allowing for other entities to use the contract, which may be to their advantage in terms of pricing.

**Prevailing Wage:** the hourly wages, usual benefits, and overtime, paid in the locality, to the majority of workers, laborers, or mechanics, in the same trade or occupation. Washington prevailing wages are

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

established by the Department of Labor and Industries, for each trade and occupation employed in the performance of public work. They are established separately for each county and are reflective of local wage conditions. [Chapter 39.12 RCW] Federal prevailing wages are established under the Davis-Bacon Act.

**Price Analysis:** the process of examining and evaluating a prospective price without evaluating the separate cost elements and profit of the supplier include in that price. The end result of price analysis is to ensure fair and reasonable pricing of a product or service.

**Procurement Professional:** Procurement Division staff with specialized training and experience in governmental procurement.

**Public Work:** Defined in RCW 39.04.010 and generally includes all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City, or which is by law a lien or charge on any property therein.

**Purchase Order:** a purchaser's written document to a supplier formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, cost of items being purchased, delivery schedule, terms of payment, and transportation.

**Quote:** an informal purchasing process in which pricing information is solicited from several sources.

**Recipient:** means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. [2 C.F.R. § 200.86]

**Repair:** a rebuild or remanufacture process for which the extent and cost cannot be determined until the item is disassembled and evaluated. A repair must contain both labor and parts.

**Request for Proposal (RFP):** the document used to solicit proposals from potential providers for goods and services. Price is usually not a primary evaluation factor. It provides for the negotiation of all terms, including price, prior to contract award, and may include a provision for the negotiation of best and final offers.

**Request for Qualifications:** a purchasing method, which is issued to obtain statements of qualifications, usually from Architects and Engineering firms as defined by RCW 39.80, to determine the most qualified.

**Request for Quotation:** a purchasing method generally used for small orders under a certain dollar threshold.

**Responsible:** A business entity or individual who has the integrity and reliability as well as the financial and technical capacity to perform the requirements of the solicitation and subsequent contract. With regard to a public works contract, a bidder is determined to be responsible as provided in RCW 39.04.350. Regarding projects funded by the Federal Transit Administration, prior to contract award, responsibility will be determined using the "Responsibility Determination Checklist."

**Responsive:** A bid or proposal that fully conforms in all material respects to the Invitation for Bids (IFB)/Request for Proposals (RFP) and all of its requirements, including all form and substance.

**Services - Personal and Professional:** Requires expertise provided by a consultant to accomplish a specific study, project, task or other work including but not limited to meeting facilitation, public

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

outreach coordination, strategic planning development, economic development study, rate setting study or technology consultant.

**Simplified Acquisition Threshold:** the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the Simplified Acquisition Threshold.

**Small Works Roster:** a roster of qualified contractors maintained for use in a modified formal bid process. [RCW 39.04.155]

**Sole Source:** purchases that are clearly and legitimately limited to a single source of supply. There is only one supplier available for purchasing the materials, supplies or equipment needed.

**Specification:** a precise description of the physical characteristics, quality, or desired outcomes of a commodity to be procured, which a supplier must be able to produce or deliver to be considered for award of a contract. There are three different categories of specifications: design, performance, and technical.

**Supplier:** a business entity or individual that provides commodities.

**Surplus:** is not needed at present or in the foreseeable future or that is no longer of value or use to the city. Per EMC Chapter 3.88 for personal property.

**Total Cost:** the total cost of commodities, which includes any applicable taxes, freight, set-up, or installation charges. This must be considered when determining which threshold applies.

**Total Quantity Requirements:** for the total quantity of an item(s) shall be considered together, not individually, when determining which cost threshold applies.

**Unauthorized Purchase:** an agreement, a commitment, or an order for any commodity, or changes to existing contracts by any person who does not have express written delegation of procurement authority to bind the City.

**Urgent Need:** an immediate need for goods or services that does not allow for the normal purchasing processing time. This is not the same as an emergency and will not, unless it meets the requirements for an emergency under this policy, be considered an emergency exception to policy.

**Value Engineering:** a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [2 C.F.R. § 200.318]

## **SECTION 3 – ETHICAL STANDARDS AND STANDARDS OF CONDUCT AS RELATED TO CONTRACTING**

The public must have confidence in the integrity of its government. This section outlines expectations and responsibilities of City staff and elected officials engaged in the selection, award, and administration of contracts, including those that are, or may be, funded in whole or in part using federal financial assistance.

This section is meant to build upon the City’s Code of Ethics and Employee Rules and Regulations #100-10-1, as may be amended to provide specific guidance and considerations for contracting with outside suppliers doing business with the City of Everett.

Pursuant to 2 C.F.R. § 200.324(c)(2), the City hereby self-certifies that this Section is compliant with the requirements of the procurement standards of the government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 C.F.R. § 200.318 through 200.326.

This Section applies to both “Part A Standard Procurement Policy” and “Part B Federal Emergency Contracting Policy.”

### **3.1 ASSIGNMENT OF CONFLICT OF INTEREST COMPLIANCE OFFICER**

The Human Resources Director is designated as the Conflict of Interest Compliance Officer whose responsibility will be to ensure proper compliance with this Section. This Policy and the identity of the Conflict of Interest Compliance Officer will be readily available and publicized to employees and contractors participating in the procurement process. The Human Resources Director may delegate this responsibility to a designee as necessary.

### **3.2 ACCEPTANCE OF GIFTS, GRATUITIES, AND KICKBACKS**

Section 4.12 of the Everett City Charter provides,

“No elected official or appointed City officer or employee of the City shall have a financial interest, directly or indirectly, in any contract, sale, lease, or purchase with or for the use of the City; **or accept, directly or indirectly, any compensation, gratuity, or reward from any other person** who is financially interested therein. Provided, however, an officer or employee does not have a prohibited interest if the officer or employee has a remote interest as defined by state law. Violation of any provision of this section may be grounds for a forfeiture of employment or of the office of the person violating the same and the contract, sale, lease, or purchase shall be void.” Remote interest is defined by RCW 42.23.040.

Additional guidance is provided in the City’s Code of Ethics and Employee Rules and Regulations #100-10-1, Section 3.1, as may be amended.

### **3.3 CONFLICT OF INTEREST**

A conflict of interest would arise when an employee, officer, agent, any immediate family member, partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the City may neither solicit nor

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. [2 C.F.R. § 200.318] No employee may participate in any part of the procurement process, including the selection, award, or administration of purchases or contracts, if he or she has a real or apparent conflict of interest. Related State of Washington governing statutes are RCW Chapter 42.23.

A “financial interest” is the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the particular procurement.

An “apparent” conflict of interest exists where an actual conflict does not exist, but where a person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement.

A City official or City employee may not directly or indirectly procure contractual services for the City from a business entity of which a relative is an officer, partner, director, or proprietor, or in which the employee, spouse, or child has a material interest.

No employee acting as a Procurement Manager, Procurement Professional, or Buyer may, directly or indirectly, purchase, rent, or lease any supply or service from a business entity in which the employee, spouse, or child is an officer, partner, director, or proprietor, or in which the employee, spouse, or child or any combination owns a material interest. Nor may a public officer or employee, acting in a private capacity, rent, lease, or sell any supply or service to the City.

The City shall comply with RCW Chapter 42.23 as applicable. Unless required otherwise by federal law, this Section 3.3 does not operate more strictly than RCW Chapter 42.23, and a “material interest” or prohibited financial interest under this Section 3.3 does not include an interest that would not be prohibited under RCW Chapter 42.23 (such as, for example, a remote interest under RCW 42.23.040).

### 3.4 EMPLOYEE DISCLOSURE REQUIREMENTS

All employees involved in the procurement process, including the selection, award, or administration of purchase orders, task releases, or contracts, must complete a Conflict of Interest Certification and Disclosure Form prior to participating in evaluations. Conflict of Interest forms will be administered by the Procurement Division. The Procurement Manager will immediately report any conflicts of interest to the Conflict of Interest Compliance Officer.

Notwithstanding, employees must immediately disclose to the Compliance Officer or designee any and all situations that create, or could create, a conflict of interest involving any procurement, purchase, contract, or other business involving the City.

Below are examples of situations that may present a conflict of interest situation that must be reported on the Conflict of Interest Certification and Disclosure Form. This list is not all inclusive and is intended only to provide guidance.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- Self-benefit. Using your position or relationship within the City to promote your own interests or those of your immediate family, including use of confidential or privileged information acquired in the course of employment at the City for benefit or gain of yourself or a member of your immediate family.
- Influence peddling. Soliciting benefits for yourself or an immediate family member from outside organizations in exchange for using your influence to advance the interests of that organization with the City.
- Other business relationships and dealings. Approving contracts with organizations in which you or a member of your immediate family have a financial or other interest or relationship, particularly if you are in a position to influence major decisions, are responsible for review, negotiation and approval of the contracts, or otherwise direct the City's business dealings with that business or entity.
- Outside commitments. Subject to applicable law, participating in social or political activities is not restricted as long as you participate as an individual and not as a representative of the City.
- Property transactions. Directly or indirectly leasing, renting, trading, or selling real or personal property to or from the City.
- Use of the City's property for personal advantage. Using or taking City resources, including facilities, equipment, personnel, and supplies, for private use or other unauthorized non-City activities.
- Recording or reporting false information. Misrepresenting, withholding, or falsifying relevant information required to be reported to external parties or used internally for decision-making purposes, in order to derive personal benefit.
- Dealings with suppliers or contractors. Personally, accepting anything of value from organizations or individuals that have or will have proposals pending with the City, or otherwise do business with the City in exchange for actual or the appearance of favorable influence.

### 3.5 MANAGEMENT OF REAL OR POTENTIAL CONFLICTS OF INTEREST

Upon disclosure, the impacted person must refrain from participating in the selection, award or administration of the affected contract until a determination has been made by the City as to whether the employee has a prohibited conflict of interest. The employee involved in the conflict situation will work with the employee's immediate supervisor, the City Attorney's office, and the Conflict of Interest Compliance Officer or designee to resolve the conflict issue in the best interests of the City. If the City determines that an employee has a real or apparent conflict of interest, the City will disqualify the employee from acting on any matter or participating in any decision(s) that could be impacted by the conflict.

Any employee that does not comply with the conflict of interest sections outlined herein may be subject to disciplinary action, up to and including termination, if warranted by the offense. If an employee fails to comply with the requirements applicable to conflicts of interest, the selection and award of the impacted contract is not automatically invalidated, although it may be. At the

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

point the actual or apparent conflict is made known, the City Attorney and Conflict of Interest Compliance Officer will review all pertinent facts and together decide the best course of action. If it is determined that the award will stand, such determination will be documented in writing and included in the Procurement File for the affected purchase or contract.

A supplier or contractor who acts or fails to act in a manner implicating a real or apparent conflict of interest is subject to remedial action, up to and including termination of the contract, if warranted by the offense.

### 3.6 ORGANIZATIONAL CONFLICTS OF INTEREST

The City will avoid organizational conflicts of interests.

An organizational conflict of interest can arise where a bidder or proposer's relationship(s) with a parent company, affiliate, or subsidiary organization, cause the City to be unable or appear to be unable to be impartial in conducting a procurement action involving a related organization. This could occur when one party has access to nonpublic information as part of its relationship with or performance on a government contract.

An organizational conflict of interest can also arise within the context of suppliers or contractors that are not related organizations. An organizational conflict of interest arises in these cases where a person, because of other activities or relationships with other persons, is unable or potentially unable to render impartial assistance or advice. These organizational conflicts may occur in circumstances of impaired objectivity, unequal access to information, and biased ground rules:

- "Impaired objectivity" arises where suppliers or contractors are unable, or potentially unable, to provide impartial and objective assistance or advice to the City due to other relationships, contracts, or circumstances, *e.g.*, circumstances where their work under one contract could entail it evaluating itself or an affiliate through an assessment of performance under another contract or an evaluation of proposals.
- "Unequal access to information" occurs when a supplier or contractor has access to nonpublic information as part of its performance under another contract with the City and where that information may provide the supplier, contractor or an affiliate with a competitive advantage in a later competition for a City contract.
- "Biased ground rules" issues arise where a supplier or contractor, as part of its performance of work under a contract with the City, has in some sense set the ground rules for another City contract. Such a situation would arise, for example, where the supplier or contractor prepares a statement of work or specifications for a contract and later competes for that contract.

Suppliers or contractors that develop or draft specifications, requirements, statements of work, or invitations to bid or requests for proposals will be excluded from competing for purchases or work covered by the same.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 3.7 STANDARDS OF ETHICAL CONDUCT

Public employment is a public trust. City officials and employees must discharge their duties impartially to ensure that responsible suppliers have fair competitive access to City procurement processes. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of the City's procurement process.

City officials and employees shall have no interest, financial or otherwise, direct or indirect, nor engage in any business transactions or activities, nor incur any obligation of any nature, which is in conflict with the City of Everett or state or federal law.

City officials and employees are expected to comply fully with all applicable ethical laws and to demonstrate the highest standards of personal integrity and to conduct their duties in ways that are free from the inference or perception that favorable treatment was sought, received or given, and to avoid any interest or activity which is in conflict with the conduct of official duties. City awarded contracts are for City business only and cannot be used for personal use.

### 3.8 LOBBYING LIMITATIONS

After the issuance of any solicitation and prior to contract award or during any amendments to existing contracts, no prospective supplier, or its agents, representatives or persons acting at the request of the suppliers may contact, communicate with, or discuss any matter relating to the solicitation or amendment with any City employees other than the Procurement Professional or designated City employee responsible for the solicitation. This prohibition includes copying such persons on written communication with the Procurement Professional but does not apply to presentations made to the evaluation committee or at any public meeting where the proposed contract is being considered for award.

### 3.9 PROTEST

Suppliers may appeal or protest an invitation, solicitation, or award of contract issued by the City by following the requirements of Chapter 3.46, Everett Municipal Code.

### 3.10 SUSPENSION AND DEBARMENT

The City will not award, subaward, or contract with any supplier that is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. [2 C.F.R. § 200.213] The Procurement Division is responsible for verifying non-debarment status for purchases made with a purchase order. Motor Vehicle Division Buyers are responsible for verifying non-debarment status for purchase orders issued by their division. Departments are responsible for verifying non-debarment status for any purchase that is made without the issuance of a purchase order. This includes PCard purchases. See the Excluded Parties Procedure.

## **SECTION 4 – PROCUREMENT PRACTICES**

### **4.1 ADVERTISING OF SOLICITATIONS**

Per 4.13 of the City of Everett Charter,

“when advertising for bids is required by City ordinance or state or federal law, at least one notice shall be published in the City official newspaper.”

Advertising is required for any solicitation above the Formal Solicitation threshold (see Section 1.9.1) unless otherwise specified in this policy.

### **4.2 CONTRACTS**

City of Everett Charter, 4.14, states:

“All written contracts, bonds and instruments of every kind and description to which the City shall be a party shall be approved as to form and legality by the City Attorney, and executed in the name of the City by the Mayor or, in accordance with written guidelines approved by Council, by his or her Chief Administrative Assistant or designated department head(s), and attested by the Clerk and when necessary, shall be acknowledged by such officers.” (Amended 11-5-96)

Thus, all contracts must be on forms approved by the City Attorney. All variations from the standard forms must be also approved by the City Attorney.

### **4.3 CONTRACT ADMINISTRATION**

The Procurement Division will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements overseen by the Procurement Division. These issues include, but are not limited to, source evaluation, protests per EMC Chapter 3.46, disputes, and claims. These standards do not relieve the City of any contractual responsibilities under its contracts. When applicable, the Federal awarding agency will not substitute its judgment for that of the City unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction. [2 C.F.R. § 200.318]

### **4.4 COOPERATIVE PURCHASING AGREEMENTS**

Cooperative purchasing fosters greater economy and efficiency and promotes cost-effective use of shared services.

Pursuant to RCW Chapter 39.34, the City may enter into an Interlocal Cooperative Purchasing Agreement with any public agency, the State of Washington, a political subdivision thereof, another state or a political subdivision of that state, an agency of the Federal Government, or a Federally Recognized Indian Tribe. As provided by state law, Interlocal Cooperative Purchasing may be used to jointly make bid calls for a joint purchase, or to purchase equipment, materials, supplies, or services on terms contained in a proposal or contract offered to another public agency. When the City uses an Interlocal Cooperative Purchasing Agreement, the procurement

## **STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING**

must comply with the procurement requirements of the other public agency. Firm written quotes shall be obtained in advance to document pricing and terms of all cooperative purchases.

Interlocal Cooperative Purchasing Agreement purchases may be made without advertising in the City's official newspaper; however, Council authorization may be required based on the anticipated or actual cost to the City.

When practical, the City should include language in its solicitations that allows other public agencies to purchase from the City's bids, quotations, or contracts, provided that the other agencies allow similar rights and reciprocal privileges to the City.

### **4.5 LOCAL BUSINESS ENCOURAGEMENT**

The City will take affirmative steps to ensure that businesses situated within the City limits are encouraged to participate in its procurement process to the extent permitted by federal, state, and local laws and regulations. City employees are strongly encouraged to provide opportunities to Everett businesses by requesting pricing or including them in solicitation processes whenever practicable.

In the event of a tie bid, the City will consider any sales tax revenue from the purchase, if applicable.

### **4.6 PERIOD OF PERFORMANCE**

City personnel will use sound business judgment in establishing and extending a contract's period of performance, with such period generally not exceeding the time necessary to accomplish the purpose of the contract.

### **4.7 PLANNING**

It is imperative that all City departments take time to properly plan purchases. Purchasing plans should be made for commodities to be purchased in both the near and distant future; thereby minimizing small orders and last-minute purchases. Planning is of the highest importance to the City. Proper planning reduces unnecessary clerical and supervisory time costs associated with the procurement process and leads to lower costs. Planning allows the Procurement Division to implement strategic sourcing to ensure the most cost effective use of tax dollars.

### **4.8 PROCUREMENT CARD**

The Procurement Division oversees the City's Procurement Card (PCard) program. The program is designed to streamline the procurement and payment of common transactions. The City's policy is to use PCards for purchasing goods and services in lieu of the standard purchase requisition (PR), purchase order (PO), and invoice payment process. The more costly and complicated PR/PO and standard invoice payment processes are intended for larger dollar purchases, fixed and capitalized assets, construction project payments, situations where a credit card purchase is not feasible or when the merchant does not accept such cards, and for repetitive purchases where better pricing may be obtained through quantity purchasing. Further guidance can be found in Operating Procedure 400-12-07, Procurement Card Program.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 4.9 PUBLIC RECORDS

The City is subject to the Washington State Public Records Act, Chapter 42.56 RCW and other statutes. The City will follow the public records requirements set forth in the relevant statutes and as outlined in each solicitation.

### 4.10 SAMPLES

If samples are needed for evaluation, contact Procurement first. Procurement will ensure that the evaluation is conducted fairly and without preference.

Samples will only be accepted if they have been requested as part of an evaluation process or in the instance of current contracted suppliers, samples that are of nominal value such as office supply samples.

When suppliers offer samples for evaluation, they will be accepted only under the following conditions:

- The sample is accepted as property of the City unless otherwise agreed upon to be returned to the supplier.
- The product is a type presently in use or is of potential use to the City. Samples of goods not likely to be purchased will not to be accepted or requested.
- Any chemicals offered as supplier samples will not be accepted unless accompanied by a Safety Data Sheet (SDS).

If supplier samples are requested or accepted, they must be sent to the Procurement Division.

### 4.11 SMALL AND MINORITY OWNED BUSINESS ENTERPRISES

The City shall not discriminate against small and minority firms, women-owned business enterprises, labor surplus area firms, or veteran-owned firms. Such entities shall be afforded the maximum practicable opportunity consistent with applicable law to compete for and obtain public contracts for services, and the City will encourage participation consistent with such business's general availability within the professional communities involved.

### 4.12 SUPPLIER RELATIONS

City employees must direct all suppliers to Procurement for information concerning the possible sale of commodities to the City. Procurement may direct a supplier to call on an employee who has requested information about a particular commodity.

### 4.13 SUSTAINABLE PURCHASING

When developing or engaging in procurement activities including, but not limited to:

- Developing bid specifications or proposal requests;
- Designing projects for construction; or
- Specifying goods to be purchased;

## **STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING**

City employees will make efforts, within authorized budget limits, to ensure those activities address and embrace the goals of preservation of natural resources, reduction of environmental impact, and increasing energy and water efficiency. Employees are encouraged to consider the life cycle cost of a commodity as part of the evaluation during a Request for Proposal process.

Where relevant, suppliers may be asked to state their reuse and recycling policies and practices in their proposals, and when so stated, such policies and practices will be considered in the award decision.

### **4.14 TRADE-INS**

The value of a trade-in will not be included when determining which purchasing threshold applies. However, the trade-in price will be considered when determining the lowest responsive and responsible offer.

### **4.15 VALUE ENGINEERING**

The City is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

**SECTION 5 – FEDERAL AND GRANT FUNDING**

If federal or state funding, financial assistance, or grant funding is involved in the proposed acquisition or contract, the solicitation requirements and clauses should be obtained from the appropriate granting entity and all required grant management procedures must be followed per 2 C.F.R. § 200.318 - 326. If funding source guidelines conflict with or are more stringent than this policy, then the stricter requirements apply and must be used. The sections below apply to all federally funded procurements, if applicable.

**5.1 FEDERAL FUNDING**

The City will comply with all applicable federal procurement requirements related to federal funding unless there is a conflict. If funding source guidelines conflict with or are more stringent than this policy, then the more stringent requirements apply and must be used.

**5.2 FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW**

The City will follow 2 C.F.R. § 200.324 in its entirety, which currently states,

- a) 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 or pass-through entity 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 or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
  - 1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - 2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - 3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - 4) 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
  - 5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
  - 1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity 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;
  - 2) 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.

### 5.3 ARCHITECTURE AND ENGINEERING

The federal requirements for Architecture and Engineering (A&E) are more detailed than the Revised Code of Washington (RCW) requirements. The federal process must be followed if federal funding is used to pay all or a portion of A&E services.

- 1) 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;
- 2) Proposals must be solicited from an adequate number of qualified sources;
- 3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- 4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- 5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural and 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.

### 5.4 ADDITIONAL COST CONTROL PROCEDURES

- A. **Value Engineering.** The City may consider opportunities to use value engineering in contracts for permanent restorative work projects that are of sufficient size to offer reasonable opportunities for cost reduction. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- B. **Joint Procurements.** To foster greater economy and efficiency, the City may enter into inter-entity agreements to conduct joint procurements. A “joint procurement” is a method of contracting in which two or more non-federal entities agree to use a single solicitation document and enter into a single contract with a supplier for delivery of goods or services in a fixed quantity, even if expressed as a minimum or total maximum. This is typically done to obtain advantages unavailable for smaller procurements. A joint procurement is distinct from a purchasing schedule.

The entity responsible for undertaking the joint procurement may, upon award of the contract, assign to other participants responsibilities for administering those parts of the contract affecting their goods or services. Participation in a joint procurement, however, does not relieve the City from the requirements and responsibilities it would have if it were procuring the goods or services itself, and does not relinquish responsibility for the actions of the participants merely because the primary administrative responsibility for a particular action resides in another entity other than the City.

A “joint procurement” is not a piggybacked contract. The City may not contract for work funded in whole or in part by Federal funds under another entity’s agreement through assignment. Doing so is considered impermissible “piggybacking” and falls short of the Federal procurement standards. Note that “joint procurements” and “piggybacking” are distinct from work performed under a mutual aid agreement.

- C. **Cooperative Purchasing.** Cooperative purchasing programs are a type of cooperative arrangement where businesses, non-profit organizations, and/or governmental entities agree to aggregate their demand for certain goods or services to get lower prices from a selected supplier. Entities typically sign up to use a cooperative purchasing program through a cooperative purchasing agreement, and program membership gives the entities access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then accomplishes the actual purchase of goods or services by negotiating with participating suppliers and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program’s agreements or contracts with suppliers. Cooperative purchasing is distinguishable from joint procurements in that the solicitation in a joint procurement is not drafted for the purposes of accommodating the needs of parties who did not participate in the initial solicitation, but who later choose to participate in the benefits of the contract. Federal Emergency Management Agency (FEMA) has advised applicants for disaster assistance grants to exercise caution in utilizing contracts through cooperative purchasing programs for FEMA-eligible work. FEMA will closely scrutinize the use of such contracts in applications for funding.
- D. **Price Adjustment Monitoring.** The assigned Procurement Professional will monitor the pricing for any pre-event contract(s) and will solicit updated pricing proposals when market conditions, cost analysis, or other factors indicate that such solicitation might be in the best interest of the City.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 5.5 BONDING

All Federal procurements, contracts, and subcontracts for construction or facility improvements that exceed the simplified acquisition threshold as identified in Office of Management and Budget OMB Memo M-18-18, (currently, \$250,000) require, at a minimum, the following bonds:

- A. A **bid guarantee** from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of their bid, execute such contractual documents as may be required within the time specified.
- B. 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.
- C. 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 for execution of the work provided for in the contract.

### 5.6 BRAND NAME SPECIFICATIONS

Unless specifically otherwise provided by applicable law, if all or a portion of federal funds are used to make a purchase, the specifications must include an allowance for "an equal" product to be offered and describe the performance or other relevant requirements of the procurement to ensure they are not limiting free and open competition (2 C.F.R. §200.319(a)).

### 5.7 CONTRACTING WITH SMALL AND MINORITY OWNED BUSINESSES, WOMEN BUSINESS ENTERPRISES AND LABOR AREA SUPPLUS FIRMS

The City is committed to ensuring that small and minority businesses, women's business enterprises, and labor area surplus firms are provided every opportunity to participate in projects as defined in 2 C.F.R. § 200.321. For federally funded procurements and contracts under this Policy, the City will:

- A. Place qualified small and minority businesses, women's business enterprises, and labor area surplus firms on solicitation lists and solicit these businesses whenever they are potential sources. The Procurement Professional will research state and local lists of qualified small and minority businesses and women's business enterprises to update its solicitation list.
  - i. A "small business" is independently owned and operated, not dominant in the field of operation in which it is bidding and qualified as a small business under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.
  - ii. A "women's business enterprise" is (a) at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose management and daily operations are controlled by one or more women.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- iii. A “minority business” is (a) at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.
  - iv. A “labor surplus area firm” is one that, together with its first-tier subcontractors, will perform substantially in labor surplus areas, as defined by the Department of Labor’s Employment and Training Administration. The Department of Labor’s list of labor surplus areas is available currently on-line at:  
<https://www.doleta.gov/programs/lisa.cfm>.
- B. When economically feasible, divide project requirements into smaller tasks or quantities to maximize participation opportunities for small and minority businesses and women’s business enterprises.
  - C. Establish delivery schedules, where the requirement permits, that encourage participation by small and minority businesses, and women’s business enterprises.
  - D. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Office of Minority and Women’s Business Enterprises.
  - E. Require contractors, if subcontracts are utilized, to take steps (A) through (D), above.

The City must document its compliance with these affirmative steps. For Federal contracts with prime contractors, the requirement that the contractor take steps (A) through (D) above must also be included in solicitations and contracts.

### 5.8 COOPERATIVE AGREEMENTS

The City will follow 2 C.F.R. § 200.318(e) which encourages governmental entities to enter interlocal agreements to maximize economy and efficiency. The guidance currently states, to foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

If using a cooperative agreement such as the Washington State Department of Enterprise Services (DES) contracts, the City will document how it is ensuring that it is paying the same rate or price as stated in the cooperative contract. Additionally, the City must verify and obtain suspension and debarment forms from the supplier before it contracts. The City cannot rely on the cooperative contracting entity for compliance with suspension and debarment.

Any use of a cooperative contract must be vetted by Procurement prior to use.

### 5.9 COST OR PRICE ANALYSIS

The Uniform Guidance, 2 C.F.R. § 200.323, requires the performance of a cost or price analysis in connection with every federal procurement action in excess of the simplified acquisition threshold. The independent cost estimates must be on file before receiving bids or proposals including proposals for change orders and contract modifications. It is a best practice to have a cost estimate on file for every solicitation.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

As part of evaluating reasonableness of costs, the City may consider the amount of profit that the contractor might receive from the engagement at issue based on consideration of such issues as 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 contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

**Price analysis** – the examination and evaluation of a proposed price without evaluating its separate components (cost and profit). This analysis is usually used for acquisition of commercial items and procurement by sealed bidding. Examples of price analysis include:

- Comparing offers with one another;
- Comparing prior proposed prices and contract prices with current proposed prices for the same or similar goods or services;
- Comparing offers with competitive published price lists, published market prices, or similar indexes;
- Comparing proposed prices with independently developed estimates;
- Comparing proposed prices with prices of the same or similar items obtained through market research.

**Cost analysis** – the review and evaluation of the separate cost elements such as labor hours, overhead, materials, etc. and proposed profit in order to determine a fair and reasonable price for a contract and the application of judgment to determine how well the proposed costs represent what the costs of the contract should be, assuming reasonable economy and efficiency. This analysis is usually used to establish the basis for negotiating contract prices for procurement by request for proposal, contract modifications, and any other case where price analysis by itself does not ensure price reasonableness. Examples of cost analysis include:

- Comparison of verified costs proposed for individual cost elements with previously incurred actual costs and independently developed estimates.
- As part of evaluating reasonableness of costs, the City will consider the amount of profit that the contractor might receive from the engagement at issue based on consideration of such issues as 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 contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- In all cases where cost analysis is performed and where there is no price competition, the City must negotiate profit as a separate element of the price. 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.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 5.10 COST PLUS A PERCENTAGE OF COST

In projects subject to federal requirements, the City will follow 2 C.F.R. § 200.323, which is an express prohibition on the use of cost plus a percentage of cost (CPPC) and cost plus a percentage of construction cost methods of contracting.

### 5.11 DISCLOSURE OF CONFLICTS OF INTEREST

The City will disclose, in writing, any real or potential conflict of interest impacting the procurement of a Federal contract to the associated federal awarding agency or pass-through entity within 14 days of learning of same.

### 5.12 FEDERAL EXCESS AND SURPLUS PROPERTY

The City will follow 2 C.F.R. § 200.318(f), which currently states, the non-Federal entity is 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.

### 5.13 GEOGRAPHICAL PREFERENCES IN FEDERAL CONTRACTS

The City will conduct procurements of Federal contracts in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference.

When contracting for federally funded architectural and engineering (A&E) services, the City may use geographic location as a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. Examples of prohibited geographical preferences include:

- Excluding suppliers or contractors from outside a geographic area.
- Providing a local supplier that has submitted a bid within a certain percentage of the lowest bid to match the lowest bid.
- Reducing, by a percentage, a bid submitted by a local supplier during the evaluation of bids submitted during sealed bidding.
- Adding weight on evaluation factors to an in-state or local business as part of a procurement by competitive proposals.

### 5.14 INDEPENDENT COST ESTIMATES

The City will develop an independent estimate for all contract work that is anticipated to exceed the Micro-Purchase threshold as identified by the Office of Management and Budget OMB Memo M-18-18, currently \$10,000. The purpose of the independent cost estimate is to provide a tool to determine if pricing is reasonable and is valuable to help determine whether suppliers have understood the scope of work as outlined. Below are guidelines for how this estimate is to be determined:

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- A. Must be independent of any potential supplier. Estimates may be prepared by the City, other knowledgeable person, or a third-party cost estimator.
- B. Should be in hand before bids or proposals are received.
  - i. At times, Suppliers and contractors submit change order proposals that include pricing; the City will seek to avoid such situations by instructing suppliers and contractors not to include pricing with change order proposals.
  - ii. Where a change order proposal includes pricing, the City will seek an estimate from someone without knowledge of the supplier's price proposal.
- C. Must be of sufficient detail to be useful.
  - i. Estimates for items such as goods can be simply an estimated amount, e.g., a piece of heavy equipment for which there is a competitive market may have a "sticker" price. It is sufficient for the estimate to contain the purchase price without more detail. Where the equipment is custom-built, the estimate should include a build-up of labor, materials, overhead, and profit to aid in analysis of price reasonableness and contract negotiation.
  - ii. Estimates for construction contracts should be of sufficient detail to allow for careful evaluation of bids.
  - iii. Estimates for Construction Manager Services should be in the same detail as that which firms will be asked to base their proposals; e.g., fee for pre-construction services, General Condition's amount, fee for services.
  - iv. FEMA has established cost curves for design and engineering services for various kinds of construction in its archived Public Assistance Guide (FEMA 322, June 2007). FEMA's current Public Assistance Program and Policy Guide does not reference these curves; however, the City may still use these older curves to develop an independent cost estimate for Architectural and Engineering services (A&E). For change order work, the City's Architectural and Engineering contracts must generally provide that A&E services may not exceed a specified percentage of the construction costs. If the percentage is within the applicable FEMA cost curve, the percentage will serve as the independent cost estimate.
  - v. Estimates of other professional services generally should be based on estimates of hours of effort and rates for various tasks.

### 5.15 NON-COMPETITIVE SOLICITATIONS

The City will follow 2 C.F.R. § 200.320(f) which currently states, 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:

- 1) The item is available only from a single source;
- 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- 4) After solicitation of a number of sources, competition is determined inadequate.

### 5.16 PRE-QUALIFIED LISTS OF SUPPLIERS

The City may use pre-qualified lists of persons, firms, and products among which to compete contracts for goods and services. Pre-qualified lists are not contracts; they are tools to aid in the procurement of future contracts by allowing the City to review the qualifications of prospective suppliers prior to contract award of an anticipated future need.

In these instances, the City will advertise for suppliers of commodities to submit a pre-determined list of qualifications. Suppliers that qualify will be solicited to provide proposals for the various goods and services as they develop. The City will ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include sufficient qualified sources to ensure maximum open and free competition.

The City will not preclude additional bidders from qualifying during the solicitation period. Use of a pre-qualified list does not eliminate the requirement that a procurement be publicly solicited.

### 5.17 PROCUREMENT OF RECOVERED MATERIALS

The City will follow 2 C.F.R. § 200.322, which currently states, a non-Federal entity that is a state agency or agency of a political subdivision of a state 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 C.F.R. 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.

### 5.18 PROHIBITED RESTRICTIONS ON COMPETITION

All procurement transactions will be conducted in a manner providing full and open competition. This includes ensuring that no restrictions are placed on a commodity that may limit competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- A. Organizational conflicts of interest, including allowing contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals to compete for such procurements. These contractors must be excluded from bidding. For more on organizational conflicts of interest see Section 3.
- B. Imposing prohibited geographical preferences
- C. Placing unreasonable requirements on firms for them to qualify to do business.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- D. Requiring unnecessary experience.
- E. Requiring excessive bonding.
- F. Non-competitive pricing practices between firms or between affiliated companies.
- G. Non-competitive solicitations or contracts to persons or firms on retainer contracts or currently under another contract where the award is not for property or services specified for delivery under the scope of the retainer contract.
- H. Specifying only a “brand name” product instead of allowing for “an equal” product to be proposed and describing the performance of relevant requirements of the procurement.
- I. Specifying a preferred item is a form of a brand name only specification. It is not permissible unless there is an appropriate non-competitive justification.
- J. Any arbitrary action in the procurement process; e.g., unfairly restrictive time limits for a potential supplier to respond to a request.

### 5.19 SMALL WORKS ROSTER

If federal funds are used to pay for all or a portion of the cost of a Small Works Roster project, then formal bidding must be performed at the federal threshold of \$250,000 per OMB Memo M-18-18 which raised the threshold for simplified acquisitions from \$150,000 to \$250,000 for all recipients.

### 5.20 SOLICITATION REQUIREMENTS

All solicitations must meet the following requirements:

- A. All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. This description must not contain features which unduly restrict competition.
- B. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.
  - i. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand, which must be met by offers, must be clearly stated.
  - ii. Performance or functional specifications are preferred to detailed technical specifications. A performance specification describes an outcome, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. When using performance specifications, the solicitation should describe what the product should be able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- C. All solicitations must identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. If using the procurement through request for proposals method, the solicitation should state if the City is reserving its right to award the contract to other than the lowest priced offeror.
- D. For procurements of Federal contracts that will be funded in whole or in part with FEMA grants, the solicitation must acknowledge the City's use of FEMA funding for the contract, in compliance with the terms of its financial assistance award from FEMA. Specifically, the document should indicate that FEMA is providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided.
- E. Solicitations should state the type of contract that will be awarded:
  - i. **Fixed Price** – provides a firm price that remains irrespective of the contractor's actual cost of performing the work, putting the risk on the contractor, and may include an economic price adjustment, incentives, or both.
  - ii. **Cost Reimbursement** – provides for payment of certain incurred costs and for the reimbursement of the contractor's reasonable, allocable, actual, and allowable costs, with an agreed-upon fee. Must include a limit to the costs that a contractor may incur, which the contractor may not exceed without the City's approval, except at its own risk. Examples include cost-plus-fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee contracts.
  - iii. **Time and Materials or Time and Equipment** – cost to the City is the sum of the actual costs of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Certain condition precedents must be met by the City before this contract may be used. See Section 10.7 for conditional requirements.
  - iv. **Cost Plus a Percentage of Cost** – the use of cost plus a percentage of cost and cost plus a percentage of construction costs methods of contracting are prohibited for Federal contracts.
    - a. Differentiating Time and Materials and Cost-Plus Percentage of Cost Contracts. As described above, a time and materials contract provides for the payment of labor costs on the basis of fixed hourly billing rates which are specified in the contract. These hourly billing rates would include wages, indirect costs, general and administrative expense, and profit. No fee or profit is allowed except as part of the fixed billing rate for direct labor hours, such that materials are billed at cost. To include for the payment of labor costs on the basis of fixed hourly billing rates and allow the contractor to bill for actual costs other than labor (such as materials or travel), plus a percentage rate of those actual costs, would constitute a prohibited cost-plus-percentage-of-cost contract. A contractor, however, is allowed to recover overhead costs on its direct costs, such as materials or travel, if the contractor's accounting system clearly separates the overhead costs associated with those direct costs and those overhead costs are not included in the overhead pool that is applied to direct labor costs. In other words, there must be no duplicate billing for material handling overhead costs in the rates applied to labor hours.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- b. Solicitations must also set forth the requirements related to contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

### 5.21 TIME AND MATERIALS

In projects subject to federal requirements, the City will follow 2 C.F.R. § 200.318, which permits Time and Material type contracts only when the following applies:

- After determining that no other contract type is suitable; and
- If the contract specifies a ceiling price that the contract may not exceed, except at its own risk.

The file for a time and materials procurement must include documentation for the determination that no other type of contract, such as cost-plus-fixed-fee, firm fixed price, is suitable for the contract being awarded.

## **SECTION 6 – STRATEGIC SOURCE SELECTION**

The City must award contracts only to responsible suppliers possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The City must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidation to obtain a more economical purchase or unbundling large procurements to encourage small business participation. Where appropriate, an analysis will be made of lease-versus-purchase alternatives, and any other appropriate analysis to determine the most economical approach. [2 C.F.R. § 200.318]

This section applies to the purchase of any commodity that does not have a prevailing wage component.

### **6.1 LIKE-KIND STRATEGIC SOURCING**

When determining which bid threshold to use for like-kind items, City employees should evaluate the purchase based on the information they know at the time of purchase. For instance, if the City has budgeted or otherwise anticipates an expenditure for a specific type of item during the year, and that budgeted amount exceeds the solicitation threshold, it is expected that the procurement requirements for that budgeted amount would be followed. Departments must not disaggregate purchases solely for the purpose of avoiding bidding requirements (bid splitting).

In the case of fuel purchases, procurement requirements for fuel would be applicable when the City has a storage tank and is purchasing bulk fuel. Procurement requirements would not be applicable for fueling City vehicles at a fuel station with a fuel card.

## **SECTION 7 – PROCUREMENT THRESHOLDS**

Cost thresholds are not limited to each individual item purchased. Staff should use the aggregate spend versus the unit cost to determine which threshold applies. For instance, the City may purchase 500 laptops over 70 transactions during the year. Each laptop or transaction may be less than the lowest competitive threshold, but the aggregate purchase of the laptops should be the dollar value used to determine which threshold applies. If the 500 laptops cost \$275,000, then staff should complete formal bidding procedures

### **7.1 MULTI-DEPARTMENT REQUIREMENTS**

To the extent practical, the requirements of separate departments and divisions for the same commodities will be considered together when determining which threshold applies.

### **7.2 MICRO-PURCHASES**

Consistent with Office of Management and Budget OMB Memo M-18-18, the City has adopted the federal micro-purchase limit of \$10,000. OMB Memo M-18-18 allows non-federal entities to purchase commodities up to \$10,000, not including sales tax, without soliciting competitive quotations if the price is considered reasonable. Departments must distribute micro-purchases among qualified suppliers when practical. Employees are strongly encouraged to seek the services of local, small, and disadvantaged businesses.

Departments may not split their purchases into smaller purchases to avoid the informal solicitation limit. Annual spend of greater than \$10,000 with a single supplier must be documented by the Procurement Division to determine if the commodities should be solicited informally.

### **7.3 INFORMAL SOLICITATIONS**

Procurement will be responsible for conducting the solicitation process for purchases greater than \$10,000, not including sales tax, that have not been exempted or excluded in Section 9. Use of the City's standard forms is required unless the Procurement Manager decides otherwise.

Procurements with a cost estimate of \$10,000 to \$249,999, including shipping but not including sales tax, will be conducted through an informal process, which includes the Request for Quotation or informal Request for Proposal solicitation method.

Informal Solicitations:

- May be accepted electronically.
- Do not require advertising.

### **7.4 FORMAL SOLICITATIONS**

Purchases with an estimated cost equal to or greater than \$250,000, including shipping but not including sales tax, will be conducted through a formal process, which includes the Invitation for Bid or Request for Proposal solicitation method.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

Formal solicitations:

- Require Council authorization prior to release.
- Must be advertised in the City's official newspaper a minimum of thirteen days prior to bid opening. Other methods may be used to attract suppliers in addition to, but not in place of publication in the City's official newspaper. If approved by the Procurement Division, electronic methods of advertising may be used if in accordance with applicable law.
- Require Council award.
- Invitations for Bids will be submitted to the City Clerk at the location and time listed in the solicitation unless the solicitation directs otherwise. Unless otherwise determined by the Procurement Division, all Invitation for Bids will be opened publicly and read aloud per the instructions listed in the solicitation.
- Formal Request for Proposals will be submitted to the Procurement office by the time listed in the solicitation unless the solicitation directs otherwise. Unless otherwise determined by Procurement, Procurement will provide a list of submitted Proposers names along with an original copy of each submitted to the City Clerk. The list of submitted proposers will be made available publicly after proposal closing.

### 7.5 REQUEST FOR QUALIFICATION – COMPETITIVE NEGOTIATIONS

When practical, Procurement will assist departments with Request for Qualification processes. The Request for Qualification method will be used to solicit for professional services as governed by Chapter 39.80 RCW. RCW 39.80.030-050 states the requirements for procuring such architectural and engineering (A&E) services. Selection of A&E firms is based on a determination of the most qualified firm, not the lowest price. Once a firm is selected, a price is negotiated.

Request for Qualifications:

- Do not require Council authorization prior to release.
- Must be advertised if the engineering services roster is not used
- Must be awarded by Council if greater than \$250,000 or if for a design of a City improvement with stamped drawings.

### 7.6 ELECTRONIC SOLICITATIONS

This policy is becoming effective as the City is transitioning processes from paper processes to electronic processes. To the extent consistent with applicable law, all procurements under this policy may be conducted electronically.

## **SECTION 8 – PUBLIC WORKS**

Public Works is governed by Chapter 3.80, Everett Municipal Code and by RCW 39.04 and other state statutes. Public Works is defined by 39.04.010 to generally include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.

The statute excludes “ordinary maintenance,” which is generally defined in WAC 296-127-010(7)(b)(iii) (as may be amended) as either (1) work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semi-annually, but at least once per year), to service, check, or replace items that are not broken; or (2) work not performed by contract that is not regularly scheduled but is required to maintain an asset so that repair does not become necessary.

### **8.1 DONATIONS**

Bona fide donations, which are provided at absolutely no cost or obligation to the City, of labor, materials, supplies or equipment to accomplish a public works project may be deducted from the estimated cost of the project. If so, a reasonable estimation of the value of donations must be documented. Donations of money toward a project would not be a deduction from project costs; rather, it is a revenue source, presumably with purpose or use restrictions.

### **8.2 ESTIMATED COST**

Regardless of which solicitation method is used, a cost estimate must be on file for any public works projects per RCW 39.04.020.

The estimated cost of the project should include all costs of the entire project, less discounts and donated items or labor. Costs include:

- Materials supplies and equipment
- Labor at the prevailing wage rate
- Sales and use taxes with the following exceptions:
  - Certain types of projects or portions of projects may be exempt from sales and use tax, such as road projects under RCW 82.08.0275 and WAC 458-20-171.

If government agencies join together to complete a public work, the total cost of the project includes all costs for all parties involved.

### **8.3 PUBLIC WORKS COMPLETED BY CITY EMPLOYEES**

Per RCW 35.22.620 (as may be amended), City staff may perform public works subject to the statutory limits.

Whenever the City has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period may be done by contract pursuant to public notice and call for competitive bids. The amount of public works that a first-class city has a county perform on its behalf under RCW 35.77.020 is considered day labor and subject to the above limits.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 8.4 PUBLIC WORKS PROJECTS LESS THAN \$10,000

Contracts less than \$10,000, including sales tax, will be awarded with minimal competition procedures. Minimal competition requires departments to obtain at least one written quote. For these projects, the City will not require bonding. Contractors must adhere to the requirements of RCW 39.04.

The City will hold ten percent (10%) retainage in lieu of performance and payment bonding per RCW 39.08.010.

While the City is not required to compete work below \$10,000, employees are encouraged to distribute the work among qualified contractors when practical. Employees are strongly encouraged to seek the services of local, small, and disadvantaged businesses first.

Procurement will verify that the contractor meets all responsibility requirements of RCW 39.04.350 prior to issuance of the purchase order. Employees must not have contractors perform work prior to the issuance of the purchase order.

### 8.5 MAINTENANCE AND REPAIR SUBJECT TO PREVAILING WAGE

Maintenance and repair, that does not meet the definition of ordinary maintenance as defined in Section 8.0 work are considered public works to existing facilities and will be solicited according to the procurement thresholds listed in Section 8. All prevailing wage requirements must be met, and the City will require bonding or withhold 10% of the contract amount per RCW 30.08.010 for projects up to \$150,000 including sales tax or the solicitation will be completed using Section 8.12.

### 8.6 ALTERNATIVE INVITATION FOR BID (\$10,000 to \$250,000) – CONSTRUCTION AND IMPROVEMENTS

In lieu of using the Small Works Roster, the City may choose to procure Public Works projects competitively using an alternative process. The City anticipates establishing this alternative process as an electronic process. Before implementation, the Procurement Division will establish guidelines for its use. Once implemented, this method may be used for Public Works projects with an estimate of \$10,000 to \$250,000.

### 8.7 SMALL WORKS ROSTER

City employees may use the Small Works Roster for competitively bidding Public Works projects with an estimated cost of up to \$350,000, or the current statutory limit listed in RCW 39.04.155. To encourage maximum competition, Procurement will send the solicitation notice to all known contractors on the Small Works list regardless of the estimated project cost.

In using the Small Works Roster process, the City will comply with the requirements listed in RCW 39.04.155. Breaking projects into units or accomplishing projects in phases to avoid bid requirements is prohibited per RCW 39.04.155(4).

Small Works Roster:

- Does not require advertising or bid bonds per RCW 39.04.155

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- Requires performance and payment bonds
- Requires the retainage to be held
- May be received electronically or at the Procurement Office
- Does not require council award per Section 1.9.5.

### 8.8 INVITATION FOR BID – CONSTRUCTION AND IMPROVEMENTS

All public works projects will be solicited through a formal Invitation for Bid unless otherwise provided in this policy. For example, projects under \$10,000 (Section 8.4), the Alternative Invitation to Bid (Section 8.6), Small Works Roster (Section 8.7) and Job Order Contracting (Section 8.10).

Public Works solicited through the Invitation for Bid method:

- Requires advertising
- Requires the submittal of a bid bond of a minimum of 5%, which must be in the form of a surety bond, cash, cashiers or certified check
- Bids must be received by the City Clerk, unless another location is designated in the solicitation
- After bid opening, the Project Manager will comply with RCW 39.04.105 which requires within two business days of the bid opening on a public works project that is the subject of competitive bids, the municipality must provide, if requested by a bidder, copies of the bids the municipality received for the project etc.
- Award must be made to the lowest responsive and responsible bidder as defined by RCW 39.04.350 unless the City rejects any and all bids
- Requires performance and payment bonds
- Requires retainage to be held
- After bid opening, the Project Manager will comply with RCW 39.04.105 which requires within two business days of the bid opening on a public works project that is the subject of competitive bids, the project manager must provide, if requested by a bidder, copies of the bids the municipality received for the project.
- The municipality shall then allow at least two full business days after providing bidders with copies of all bids before executing a contract for the project. Intermediate Saturdays, Sundays, and legal holidays are not counted.

### 8.9 PUBLIC WORKS RETAINAGE BONDS

Public Works Retainage Bonds are governed by Chapter 3.81, Everett Municipal Code.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 8.10 ALTERNATIVE PUBLIC WORKS PROCEDURES

RCW 39.10.200 authorizes the City to use the alternative public works contracting procedures upon application and written approval from the project review committee, either in general under RCW 39.10.270, or for a particular project under RCW 39.10.280. Alternative public works procedures include:

- Design-Build Procedures described in RCW 39.10.300-330
- General Contractor Construction Manager Procedures described in RCW 39.10.340-410
- Job Order Procedures described in RCW 39.10.420-460

### 8.11 PERFORMANCE BASED CONTRACTS

Per RCW 39.35A, the City may use competitively negotiated performance-based contracts for water and energy conservation or waste reduction equipment and services where payments would be based on actual savings achieved.

### 8.12 LOCALLY FUNDED TIME AND MATERIALS – ON CALL CONTRACTS

Some locally funded public works projects may be conducted per RCW 35.22.620.

Cities, Counties, Ports, Water-Sewer Districts, and Public Utility Districts have authority to enter into unit priced or time and materials contracts with annual Prevailing Wage Intent and Affidavit filing and annual Prevailing Wage updates.

### 8.13 APPRENTICES

Some projects may be subject to apprentice requirements as set forth in Resolution # 5286 and Resolution #7461.

### 8.14 PROJECT LABOR AGREEMENT

Some projects may be subject to a project labor agreement as set forth in Resolution #7461.

## **SECTION 9 – COMPETITIVE BIDDING – EXEMPTIONS AND EXCLUSIONS**

Competitive bidding requirement exemptions are governed by RCW 39.04.280. The following commodities are excluded from the competitive requirements provided in this policy.

### **9.1 EXEMPTIONS LIST**

- Advertising to promote the City or other advertising business needs
- Any exchange wherein the City of Everett receives services or property in exchange for consideration other than money
- Contracts for employment whether negotiated through duly authorized labor representative or not, and payroll disbursements or any other payments incidental to such contracts
- Employee benefit services procured through brokers
- Employee allowance purchased items such as boots and prescriptive eye protection for Fire that are bought by the employee with a city provided allowance.
- Environmental analytical testing coordinated through the Everett Utility Operations that include Environmental Laboratory, Environmental Monitoring and Compliance group, or Water Filtration Water Quality employees. Examples include wastewater, drinking water, stormwater, surface water, biosolids, and waste disposal.
- Fuel hedging contracts
- Grants and gifts or such purchases made with the proceeds from any grant, gift, bequest or donation to the extent the application of this policy would conflict with the requirements, conditions, or limitations attached to the grant, gift, bequest, or donation
- Insurance and bond purchases
- Interdepartmental transactions
- Services of law firms or outside counsel, expert witnesses, trial consultants, adjusters or other persons or firms deemed by the City Attorney as necessary to address the City's legal needs. Such firms or persons must be selected by the City Attorney or his or her designee and the form of contract or engagement will be as approved by the City Attorney or his or her designee.
- Memberships and dues
- Performers who are hired to entertain for City-sponsored community events
- Postage, permit fee, license involving a single source of governmental entity
- Professional development services for employees as determined by Human Resources
- Public utility service such as water, sewer, electricity, phone and others as classified

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- Purchases made for the amended and restated interlocal cooperation for design, implementation, operation, and maintenance of the Regional Fare Coordination System (ORCA)
- Purchases or fees from other public entities such as regional transit fares
- Real Property purchases, sales, lease, licenses or other contracts affecting real property
- Services relating to current or prospective employee hiring, promotion, or evaluation
- Settlements of claims for taxes or damages of any sort, whether based on tort, contract or otherwise
- Surplus purchases from other public entities
- Trainers or instructors who provide their services to teach classes for the community
- Training and services related to the physical, emotional, or mental development of any City of Everett employee
- Travel and moving expenses of officers and employees, as well as applicant expenses
- Veterinary services or products provided to animals in the custody of the City

### 9.2 PURCHASE FROM ANOTHER LOCAL GOVERNMENT

A local government may purchase used equipment from another local or state government by using the public process described in RCW 39.33.010. A best practice is to evaluate the negotiated price to ensure that one fund is not benefiting from another.

### 9.3 PURCHASE OF USED VEHICLES, EQUIPMENT, AND FURNISHINGS

The Procurement Manager may determine on a case-by-case basis the method(s) of purchasing used motor vehicles, equipment or furnishings. Such methods may include, for example, purchase from auctions, dealers or public agencies. Prior to purchasing, an analysis will be completed which documents that the purchase price is considered fair and reasonable and is in the best interest of the City. The Washington State definition of "used equipment" does not include equipment already in its possession through leasing or renting.

The purchase of items from auctions is governed by RCW 39.30.045.

### 9.4 SOLE SOURCE

Sole source procurements are governed by RCW 39.04.280(1)(a). Sole source procurements may be made directly from a sole source supplier without soliciting additional competition if there is clearly and legitimately only one source capable of supplying the commodity that result in only one source.

In the event the commodity is available from only one supplier, a Sole Source Justification Form must be completed and provided to the Procurement Manager.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

When a single or annual proposed sole source purchase exceeds the Council authorization limit, the Purchasing Manager must seek the City Council's approval, by resolution, that there is only one source. The resolution will recite the factual basis for the exception from competitive procurement.

### 9.5 SPECIAL MARKET CONDITIONS

Per RCW 39.04.280(1)(b).

### 9.6 EMERGENCIES

#### 9.6.1 GENERAL

Emergency procurements are governed by RCW 39.04.280.

Competitive bidding is not required when an emergency exists; however, in making emergency purchases, an effort will be made to include the level of competition that is practical under the circumstances.

An "emergency" means unforeseen circumstances beyond the control of the municipality that either:

- A. Presents a real, immediate threat to the proper performance of essential functions; or
- B. Will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

#### 9.6.2 DECLARATION OF EMERGENCY BY CITY COUNCIL

- A. If an emergency exists, and time permits, a resolution will be sought from Council that will: (a) contain a written finding of the existence of the emergency, (b) declare an emergency situation exists; (c) waive competitive requirements; and (d) authorize the award, on behalf of the City, of all contracts necessary to address the emergency situation, including but not limited to, public works contracts and architectural and engineering services.
- B. Unless otherwise provided by the emergency resolution adopted by City Council, the City staff will provide to City Council written reports of contracts awarded and purchases made under the emergency resolution.

#### 9.6.3 DECLARATION OF EMERGENCY BY MAYOR

- A. If an emergency exists and time does not permit seeking a City Council resolution under 9.6.2 above, the Mayor may declare an emergency situation to exist, waive competitive requirements, and award contracts on behalf of the City to address the emergency situation. Employees are encouraged to use the Emergency Justification Form to request the Mayor's declaration.
- B. If a contract is awarded by the Mayor without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the Mayor, and that finding must be posted on the City's website and reported to City Council no later than two weeks following the award of the contract.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 9.6.4 DECLARATION OF EMERGENCY BY DEPARTMENT DIRECTOR OF DESIGNEE

- A. If an emergency exists and time does not permit seeking a City Council resolution under 9.6.2 above or a Mayoral Declaration under 9.6.3 above, the Department Director or designee may declare an emergency situation to exist, waive competitive requirements, and award contracts on behalf of the City to address the emergency situation.
- B. As soon as possible after the declaration of emergency, department director will submit the Emergency Ratification Form to Administration, reciting the facts that constituted the emergency, enumerating the purchases and their costs, and requesting that the waiver of competitive bid requirements be ratified.
- C. If a contract is awarded under this section 9.6.4 without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the department director, and that finding must be posted on the City's website and reported to City Council no later than two weeks following the award of the contract.

### 9.7 PROFESSIONAL, PERSONAL, OR ARCHITECTURAL & ENGINEERING SERVICE AGREEMENTS – CONTRACTS REQUIRING COMPETITIVE BIDDING OR PROCUREMENT OF SERVICES – VIOLATIONS BY MUNICIPAL OFFICER – PENALTIES

Officers and employees should be aware of possible personal penalties, termination, and financial liability for intentional and willful violation of competitive bidding laws. RCW 39.30.020 provides:

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in willful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding or procurement procedures for consulting, architectural, engineering, or other services, upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally, with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his or her office. For purposes of this section, "municipal officer" means an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2).

## **PART B– FEDERAL EMERGENCY CONTRACTING POLICY & PROCEDURES**

Part B of the Procurement Policy applies to contracts that may be funded in whole or in part with federal emergency financial assistance, such as those awarded in response to a disaster which has been or which the City of Everett anticipates will be declared as such by the President of the United States.

### **SECTION 10 – EMERGENCY CONTRACTING OVERVIEW**

#### **10.1 ASSIGNMENT OF CONTRACT MANAGER**

For every procurement or contract governed by Part B, the Procurement Division will assign a Procurement Professional who will serve as the “Contract Manager” and who will be the point-of-contact for all matters related to that procurement or contract.

#### **10.2 ESTABLISHMENT OF THE PROCUREMENT FILE**

For every procurement and contract governed by Part B, the Contract Manager will establish a Procurement File. The Procurement File will include all items required pursuant to this Policy and any other items deemed relevant to the procurement or the resulting contract. The Procurement File will include records to detail the history of the procurement and the resulting contract and must include the following at a minimum:

- A. Rationale for determining the need for the services or work covered
- B. Rationale for the method of procurement selected; i.e., micro purchases, small purchase procedures, sealed bids, competitive proposals, or noncompetitive proposals
- C. Rationale for selection of contract type, i.e. lump sum, unit price, cost reimbursement, time and materials/equipment. If a time and materials or time and equipment contract is used, a completed Determination of Suitability must also be included.
- D. Copy of the independent cost analysis
- E. List of sources solicited
- F. Copies of published notices of proposed contract action
- G. Copy of the solicitation, all addenda, and all amendments
- H. List of all responsible suppliers including proposed pricing, including a copy of each supplier’s complete response to the solicitation, submission, or documentation
- I. Documentation evidencing appointment of selection committee or description of how supplier(s) or contractor(s) was selected
- J. Rationale for the selection or rejection of supplier or contractor, including a determination of contractors’ responsiveness, grading sheets, evaluations, and reasons for rejection of any bid
- K. Determination regarding responsibility of the selected supplier or contractor

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- L. Documentation confirming good standing of supplier or contractor, including copy of search via System for Award Management - [www.sam.gov](http://www.sam.gov)
- M. Notice of award
- N. Notice to unsuccessful suppliers and any record of debriefing
- O. Record of protests, disputes, and claims
- P. Bid, performance, payment, and other bond documents
- Q. Copy of contract
- R. Basis for the contract price, including cost or price analysis with pre-award estimate, bid sheets, and any independent research on cost or price
- S. Documentation regarding any conflict of interest issues that arise and description of how they were handled
- T. Notice to proceed

The documentation included in the Procurement File should be proportionate with the size and complexity of the procurement.

### 10.3 PROPER METHODS OF PROCUREMENT

- A. **Procurement by Micro-Purchase Procedure.** For the acquisition of supplies or services when the aggregate dollar amount does not exceed the micro-purchase threshold defined at 2 C.F.R. § 200.67 (currently \$10,000), the City, to the extent practicable, will distribute such purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the City considers the price to be reasonable. The Contract Manager or person designated to handle the purchase will also document the City's determination regarding price but need not document the reason for the procurement method, contractor selection, or selection of contract type. The City must, however, document its determination that the contractor is responsible and reason for selection if more than one supplier was considered. If applicable, the City must also document its determination that the otherwise lowest bidder is not responsible.
- B. **Procurement by Small Purchase Procedure.** When securing services, supplies, or other property which do not cost more than the simplified acquisition threshold which, pursuant to 41 U.S.C. § 403(1), is currently listed as \$250,000, the City shall obtain written price or rate quotations from at least three qualified sources. The contracts should be fixed price or not to exceed cost-reimbursement contracts with assurances that the scope of work can be completed for less than the simplified acquisition threshold. The Procurement File must include an independent estimate that the procurement is within the threshold to qualify for this type procurement. Any future changes, particularly any that cause the procurement to rise above the small purchase threshold, should also be documented in the Procurement File. The City must also document its determination that the contractor is responsible and its reason for selection if more than one bidder was considered. If applicable, the City must also document its determination that the otherwise lowest bidder is not responsible.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- C. **Procurement by Sealed Bids.** Sealed bids will be used when feasible and as long as the following conditions apply:
- i. A complete adequate and realistic specification or purchase description is available
  - ii. Two or more responsible bidders are willing and able to compete effectively for the business
  - iii. 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 the City determines sealed bidding is the appropriate method of procurement, it must:

- i. Publicly solicit the bid
  - ii. Ensure bids are solicited from an adequate number of known suppliers (minimum of 3, although more may be appropriate depending on the facts and circumstances of the procurement), providing them sufficient response time prior to the date set for opening the bids
  - iii. Include any specifications and pertinent attachments in the invitation for bids, which shall define the items or services in order for the bidder to properly respond
  - iv. Open the bids at the time and place prescribed in the invitation for bids
  - v. Award a firm fixed price contract such as lump sum or unit price in writing to the lowest responsive and responsible bidder
  - vi. Consider factors such as discounts, transportation costs, and life cycle cost in determining which bid is lowest when these factors are specified in the bid documents
  - vii. Only use payment discounts to determine the low bid when prior experience indicates that such discounts are usually taken advantage of
  - viii. Only use a fixed price incentive contract or include an economic price adjustment provision in a fixed price contract when there is a rational basis for doing so, which must be documented in the Procurement File
  - ix. Reserve the right to reject any or all bids, provided there is a sound documented reason
- D. **Procurement by Request for Proposal.** If the City determines that the sealed bid method is not appropriate for obtaining certain goods and services i.e., the contract award cannot be based exclusively on price or price-related factors due to the nature of the goods or services required, the City will issue a Request for Proposal (RFP).

- i. Requirements for RFPs.
  - a. RFPs must be publicized.
  - b. RFPs must identify all evaluation factors and their relative importance but need not disclose numerical percentage ratings or weights. Evaluation factors must reflect the subject matter and elements most important to the City. Examples include

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

technical design, technical approach, length of delivery schedules, past performance, and quality of proposed personnel.

- c. The City must solicit responses from an adequate number of qualified sources and provide them with reasonable response time before the date set for receipt of proposals. An adequate number is a minimum of three sources, although more may be appropriate depending on the facts and circumstances of the procurement.
  - d. The City must award the contract to the responsible firm whose proposal is the most advantageous to the City with price and other factors considered. The City may award a contract to the offeror whose proposal offers the “best value” to the City, provided that the solicitation informs potential offerors that the award will be made on a “best value” basis and includes a statement that the City reserves the right to award the contract to an offeror other than the lowest priced offeror.
  - e. Any response to publicized RFPs must be considered to the maximum extent practical.
- E. **Evaluation of Proposals.** Prior to issuing the RFP, the Contract Manager must ensure that the written method for conducting technical evaluation of the proposals received and for selecting offeror(s) is included in the Procurement File. The City must consider all evaluation factors specified in the solicitation documents and evaluate offers only on those factors. Evaluation factors may not be modified after proposals have been submitted without re-opening the solicitation. If a contract will include options, the City must evaluate proposals for any option quantities or periods contained in the solicitation if it intends to exercise those options after the contract is awarded.
- F. **Special Considerations for Architectural & Engineering Professional Services.** The City may use competitive request for qualifications 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.

If failing to agree on a fair and reasonable price, the City may conduct negotiations with the next most qualified offeror. If necessary, the City will conduct negotiations with successive offerors in descending order until a contract award can be made to the offeror whose price is fair and reasonable.

### 10.4 RESPONSIBLE SUPPLIER

See Section 2 definitions of Responsible Supplier. The City may award contracts only to responsible suppliers or contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. For each contract subject to Part B, the City will make a documented determination that the prospective supplier or contractor qualifies as responsible and will set forth the basis for that determination in the Procurement File.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

### 10.5 SOLE SOURCE & PROCUREMENT BY NON-COMPETITIVE MEANS

- A. **Sole Source:** The City will follow 2 C.F.R. § 200.320(f) and documented per Section 9.4 of Part A Standard Procurement Policy, which also apply in a federal emergency. In the case of a sole source award to an existing contractor already performing work before a major disaster, there would be a substantial duplication of costs that would not be expected to be recovered through competition. This situation would arise, for example, if a contractor was in the middle of constructing a facility when the facility was damaged by a major disaster, and the scope of work under the proposed project was to repair the construction work completed as of the date of the incident.
- B. **Emergency:** The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. The City may forego public procurement requirements to address exigent circumstances--meaning that there is no time to conduct a procurement before the goods and services must be obtained. The City must document its rationale in the Procurement File. In making such a determination, the City will consider the totality of circumstances, including the following to determine whether a procurement meets the definition of "emergency" or "exigency" circumstance:
- i. An "exigency" is something that is necessary in a particular situation that requires or demands immediate aid or action. In the case of an exigency, the City would be seriously injured unless it performed the procurement in a noncompetitive manner.
  - ii. An "emergency" is an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. An emergency will typically involve a threat to life, public health or safety, improved property, or some form of dangerous situation.

For any "exigency" or "emergency:" Use of the public exigency or emergency exception is only permissible during the actual exigent or emergency circumstances. Once the exigent or emergency circumstances cease to exist, the City is expected to transition to a more appropriate method of contracting using full and open competition. Failure to properly transition to a more appropriate method of contracting at the end of the exigent or emergency circumstance jeopardizes federal funding.

The federal awarding agency or pass-through entity authorizes this type of procurement in response to a written request from the City. Note that this approval is exceptionally rare.

- C. If, after following proper procurement guidelines by soliciting from several sources, competition is determined to be inadequate, the City may select a supplier provided a cost analysis is performed to demonstrate the cost of the goods or services is reasonable. This situation could arise when the City has advertised the Invitation for Bids or Requests for Proposals and solicited several sources but has received only a single bid or proposal or received no responsive bids or proposals. Such circumstances must be well-documented in the Procurement File.

Before using this exception, the City should review its solicitation and the publicizing of its solicitation to ensure that the solicitation was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

is found to be the case, the City should revise the solicitation and re-publicize it in order to resolve the competitive concerns.

In undertaking this review, it may be necessary to speak to those firms solicited to find out why they did not submit offers or bids. If the reason is an overly restrictive specification or delivery requirement, then the City should evaluate whether to cancel the solicitation, change that specification to allow for more bids or offers, and re-solicit bids or offers. If the City chooses to move forward with the award considering the restrictive specification, then the City must document in the Procurement File why the restrictive specification or delivery requirement was necessary and could not be modified to enable additional competition.

- D. A “cardinal change” is a significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. A cardinal change is a noncompetitive award that should only be made if the necessary conditions described above are met.

Where there is no price competition, the City must negotiate profit as a separate element of price.

### 10.6 DOCUMENTATION ASSOCIATED WITH PROCUREMENT BY NON-COMPETITIVE MEANS

- A. Where the City contemplates using non-competitive proposals to award a contract, the Contract Manager must document the reason for a non-competitive procurement, in a manner such that any reasonable person(s) unfamiliar with the circumstances will be able to identify and understand the underlying reasons for the non-competitive procurement. The justification will cite at least one of the exceptions to competition listed above, and indicate in detail, the reasons that support the exception.
- B. If the justification relates to a situation where there would be substantial duplication of costs that would not be expected to be recovered through competition, then the Contract Manager must describe the nature of the costs or effort avoided, including any and all organizational effort on the part of the City.
- C. If the justification relates to an exigency or emergency, the City must document the nature of the exigency or emergency. Non-competitive procurements should be limited in duration to the period necessary to conduct a competitive procurement.
- i. Where the “exigency or emergency” exception is used to justify the noncompetitive procurement of a Federal contract, the following contracting requirements still apply:
- The City must document the exigent or emergency circumstances that justify the use of a non-competitive method of procurement.
  - The resulting contract must include the required contract clauses at 2 C.F.R. § 200.326 and Appendix II to the Uniform Rules.
  - The resulting contract must include the Federal bonding requirements at 2 C.F.R. § 200.325 if the contract is for construction or facility improvement.

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- The City must award only to a responsible contractor.
  - The City must complete a cost or price analysis to determine if the cost or price is fair and reasonable.
  - The City may not use cost-plus-percentage-of-cost contracting.
  - If the City uses a time and materials or time and equipment contract, it must document its determination that no other contract type was suitable, include a ceiling price in the contract that the contractor exceeds at its own risk, and assert a high degree of oversight to ensure that the contractor is using efficient methods and effective cost controls.
- D. If the justification relates to lack of competition, the Contract Manager shall document the justification for and why the City moved forward with a noncompetitive award without cancelling the solicitation and resoliciting offers or bids. Evaluation of the sufficiency of publication of the solicitation to an adequate number of firms should be documented. Communications with firms solicited to find out why they did not submit offers or bids should be documented. Evaluation of whether to cancel the solicitation, change that specification to allow for more bids or offers, and re-solicit bids or offers should be documented. Any decision to move forward with an award with a restrictive specification should be documented, including why the restrictive specification or delivery requirement was necessary and could not be modified to allow additional competition.
- E. For any proposed contract with an estimated value of more than the simplified acquisition threshold, which pursuant to 41 U.S.C. § 403(1) is currently listed as \$250,000, procurement using the non-competitive proposals method requires approval by the City's attorney and that the non-competitive proposals method is appropriate under the exception(s) as identified above.

### 10.7 TIME AND MATERIALS OR TIME AND EQUIPMENT CONTRACTS

A time and materials (T&M) or time and equipment (T&E) contract is a contract under which the cost to the City is the sum of the actual costs of materials or equipment and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

In Federal contracting, these types of contracts are generally discouraged, but may be unavoidable in certain circumstances. Thus, the City will award and utilize time and equipment type Federal contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. The City will assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. For any T&M or T&E Federal contracts, the Procurement File must include a completed Determination of Suitability of Time & Materials Contract including the following:

- A. Written determination that no other contract type is suitable with supporting documentation regarding the emergency or exigent circumstances that exists, and other factors considered

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- B. Description of any operational concerns supporting need to proceed on an expedited timeline
- C. Statement and supporting documentation as to why a detailed scope of work could not be developed for the work
- D. Confirmation of ceiling price including support for calculation and documentation of contractor agreement
- E. Price analysis to support determination that the hourly rates are reasonable and justifiable under the conditions, including independent estimate and rate comparisons
- F. Additional documentation regarding the process used to monitor the contractor(s) and description of the type of records maintained

Generally, federal funding of T&M or T&E contracts will be limited to a reasonable time based on the circumstances during which the City cannot define a clear scope of work. Accordingly, the City will ensure in these contracts that it has the unilateral right to terminate the contract for convenience so that the City can award a follow-on fixed price or cost reimbursement type contract after the exigency period has passed.

### 10.8 UNNECESSARY OR DUPLICATIVE ITEMS

It is the City's policy to avoid the acquisition of unnecessary or duplicative items. The City will contract only for current and reasonably expected needs and avoid acquisition of unnecessary or duplicative items. Written justification for the purchase of goods or services must be documented in the Procurement File prior to the initiation of any procurement process.

Consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase, which is considered unbundling. Bundling is the practice of packaging many contracts together, essentially making it impossible for small businesses to compete for the work. The bundled contracts can limit competition. Unbundling requires an analysis of each procurement to document that the purpose is to avoid unnecessarily limiting small and disadvantaged business participation. However, "project splitting," breaking out a larger procurement merely to bring it under the micro-purchase or simplified acquisition threshold is not permitted.

Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. As to temporary facilities, the City must determine whether leasing, purchasing, or constructing is the most cost-effective option.

As to equipment to perform emergency work, the City must consider the estimated length of the period the equipment is to be used and the extent of use within that period; cumulative rental payments for the estimated period of use; net purchase price; transportation and installation costs; maintenance and other service costs; availability of purchase options; and trade-in or salvage value. Any such analysis should be documented and maintained in the Procurement File.

## **STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING**

The City may award contracts for the potential performance of work under an emergency or major disaster before an incident occurs. These pre-positioned or pre-awarded contracts must be awarded in accordance with this Policy and must adequately encompass in their scope of work the type and extent of work anticipated for their use in response to and recovery from the disaster. Similarly, a “blue-sky” contract that is not necessarily related to emergency or disaster work, but which the City may use in response to an emergency or major disaster, should be procured under this Part B and must contemplate the City’s needs resulting from a reasonably expected disaster. Inclusion of such requirements must be clear from the solicitation and documented in the Procurement File.

## **SECTION 11 – ETHICAL STANDARDS AND STANDARDS OF CONDUCT**

See Section 3 of “Part A - Standard Procurement Policy,” which applies in a federal emergency.

## **SECTION 12 – FEDERAL REQUIREMENTS**

See Section 5 of “Part A - Standard Procurement Policy,” which applies in a federal emergency.

## **SECTION 13 – FEDERAL EMERGENCY CONTRACTING REQUIREMENTS**

### **13.1 CONTRACT PROVISIONS FOR FEDERAL EMERGENCY CONTRACTS**

All Federal contracts must contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards and in FEMA guidance available at:

<https://www.fema.gov/media-library-data/1483976790556-96bfcf3bf2c64e94d6f63dd4169a7d2c/RequiredContractClauses2C.F.R.200.326and2C.F.R.Part200AppendixII10917.pdf>

These provisions relate to:

- A. Remedies – required for all contracts in excess of the simplified acquisition threshold, currently \$250,000
- B. Termination for Cause and Convenience—required for all contracts in excess of \$10,000
- C. Equal Opportunity Employment—required for all “federally assisted construction contracts” as defined by 41 C.F.R. § 60-1.3
- D. Davis-Bacon Act and Copeland “Anti-Kickback” Act—not required for contracts funded by FEMA’s Public Assistance or Hazard Mitigation Grant Programs
- E. Contract Work Hours and Safety Standards Act—required for contracts in excess of \$100,000 that involve the employment of mechanics or laborers
- F. Clean Air Act and Federal Water Pollution Control Act—required for contracts in excess of \$150,000
- G. Debarment and Suspension—required for all contracts
- H. Byrd Anti-Lobbying Amendment—contractors that apply or bid for an award of \$100,000 or more are required to file an anti-lobbying certification
- I. Changes—recommended for FEMA-funded contracts
- J. Access to Records—required for FEMA-funded contracts
- K. Department of Homeland Security Seal, Logo, and Flags—required for all contracts
- L. Compliance with Federal Law, Regulations, and Executive Orders—required for all contracts

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

- M. No Obligation by Federal Government—required for all contracts
- N. Program Fraud and False or Fraudulent Statements or Related Acts—required for all contracts

Not all of these provisions are applicable to every contract. Some of these provisions are required to be in a form provided by statute or regulation.

### **SECTION 14 – FEDERAL EMERGENCY PROCUREMENT PROCEDURES**

#### **14.1 ADDITIONAL COST CONTROL PROCEDURES**

- A. **Value Engineering.** The City may consider opportunities to use value engineering in contracts for permanent restorative work projects that are of sufficient size to offer reasonable opportunities for cost reduction. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.
- B. **Joint Procurements.** To foster greater economy and efficiency, the City may enter into inter-entity agreements to conduct joint procurements. A “joint procurement” is a method of contracting in which two or more non-federal entities agree to use a single solicitation document and enter into a single contract with a supplier for delivery of goods or services in a fixed quantity, even if expressed as a minimum or total maximum. This is typically done to obtain advantages unavailable for smaller procurements.

The entity responsible for undertaking the joint procurement may, upon award of the contract, assign to other participants responsibilities for administering those parts of the contract affecting their goods or services. Participation in a joint procurement, however, does not relieve the City from the requirements and responsibilities it would have if it were procuring the goods or services itself, and does not relinquish responsibility for the actions of the participants merely because the primary administrative responsibility for a particular action resides in another entity other than the City.

A “joint procurement” is not a piggybacked contract. The City may not contract for work funded in whole or in part by Federal funds under another entity’s agreement through assignment. Doing so is considered impermissible “piggybacking” and falls short of the Federal procurement standards. Note that “joint procurements” and “piggybacking” is distinct from work performed under a mutual aid agreement.

- C. **Cooperative Purchasing.** Cooperative purchasing programs are a type of cooperative arrangement where businesses, non-profit organizations, and/or governmental entities agree to aggregate their demand for certain goods or services to get lower prices from selected suppliers. Entities typically sign up to use a cooperative purchasing program through a cooperative purchasing agreement, and program membership gives the entities access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. The member then accomplishes the actual purchase of goods or services by negotiating with participating suppliers and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program’s agreements or contracts with suppliers. Cooperative purchasing is distinguishable from joint procurements in that the solicitation in a joint procurement is not drafted for the

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

purposes of accommodating the needs of parties who did not participate in the initial solicitation, but who later choose to participate in the benefits of the contract. FEMA has advised applicants for disaster assistance grants exercise caution in utilizing contracts through cooperative purchasing programs for FEMA-eligible work. FEMA will closely scrutinize the use of such contracts in applications for funding. Accordingly, the City should be guided by the following policies with respect to cooperative purchasing as it relates to the procurement of contracts under this Part:

- i. **Micro-Purchases:** while following the procedures above, the City may use a cooperative purchasing program to procure goods or services without further competition among supplier not participating in the program (currently under \$10,000).
- ii. **Small Purchases:** while following the procedures outlined above, the City may obtain price or rate quotations solely from suppliers participating in a cooperative purchasing program (currently under \$250,000).
- iii. **Sealed Bids and Competitive Proposals:** for procurements greater than \$250,000, the City must seek approval from City Council prior to utilizing a contract under a cooperative purchasing program.
- iv. **Noncompetitive Procurements:** The City may choose any supplier, regardless of that supplier's participation in a cooperative purchasing program, as long as there is a proper justification for sole sourcing, as outlined above.
- v. **Price Adjustment Monitoring:** The assigned Contract Manager will monitor the pricing for any pre-event contract(s) and will solicit updated pricing proposals when market conditions, cost analysis, or other factors indicate that such solicitation might be in the best interest of the City.

### **SECTION 15 – GENERAL POLICY REVISIONS**

The Mayor or the Mayor's Chief Administrative Assistant may approve revisions, additions, or deletions to these policies.

### **SECTION 16 – RELATED POLICIES, ORDINANCES, RESOLUTIONS AND OPERATING PROCEDURES**

Electronic Signatures on Contracts Policy/Procedure

Excluded Parties Procedure

Grant Administration Policy/Procedure

Job Order Contract Process Manual

Ordinance 2761-04 - An Ordinance Repealing Ordinance 977-83 and Establishing Change Order Authority in Public Works Projects

Procurement Card (PCard) Program Operating Procedure

Project Manager Handbook Standard Operating Procedures

## STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

Resolution 5286 Promoting the Use of Apprentices in Public Works Projects

Resolution 7461 Concerning Project Labor Agreements and Community Workforce Agreements

### **SECTION 17 – RELATED FORMS PART A - BLUE SKY PROCUREMENTS**

Brand Name or Standardization Justification

Conflict of Interest and Disclosure Form

Emergency Purchase Justification

Emergency Purchase Ratification

Procurement History & Contract Check List

Sole Source Justification

Used Vehicles, Equipment, & Furnishings Purchase Analysis

### **SECTION 18 – RELATED FORMS PART A & B – FEDERALLY FUNDED PROCUREMENTS**

Certificate of Non-Debarment / Suspension

Certification Regarding Lobbying by Contractor

Disclosure of Lobbying

Federal Clause Checklist

Federal Grant Procurement Checklist

Procurement History & Contract Checklist

Responsibility Determination Checklist

### **SECTION 19 – RELATED FORMS PART B – SPECIFIC TO FEDERAL EMERGENCIES**

Disaster Information Sheet for Procurement File

Determination of Suitability of Time & Materials or Time & Equipment Contract

Emergency Purchase Order

Federal Disaster Procurement File Checklist

Procurement Checklist for Compliance with 2C.F.R. Part 200

Project Documentation Worksheet

STANDARD PROCUREMENT POLICY & FEDERAL EMERGENCY CONTRACTING

Issued By: Theresa Bauccio-Teschlog

Theresa Bauccio-Teschlog, CPPB, Procurement Manager

Approved By: Kandy Bartlett

Kandy Bartlett, Human Resources Director

Approved By: Susy Haugen

Susy Haugen, Finance Director – Treasurer

Approved By: Cassie Franklin

Cassie Franklin, Mayor