

**RESOLUTION 10.05.2021.A**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BEVIL OAKS, TEXAS, ADOPTING A PROCUREMENT POLICY IN RELATION TO FEDERAL GRANTS**

**WHEREAS**, the City from time to time applies for Federal grant funding; and

**WHEREAS**, such grant applications require the City to provide their procurement policies to ensure appropriate expenditure of any funds awarded.


**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEVIL OAKS, TEXAS:**

**Section 1.** That the Procurement Policy, attached hereto as "Exhibit 01", is hereby adopted as the official Procurement Policy of the City of Bevil Oaks, Texas for all Federal Grants.

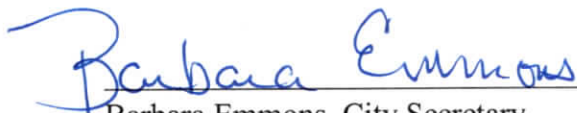
**Section 2.** To the extent that any federal grant was applied for under a previous procurement policy of the City, that policy shall remain in effect only for the purposes of procurement under the particular grant as awarded.

**Section 3.** The City Council hereby adopts such policy effective immediately upon its passage.

Passed this 05 day of October, 2021.

  
\_\_\_\_\_  
Doug Mullins, Mayor Pro-Tem  
City of Bevil Oaks, Texas

Attest

  
\_\_\_\_\_  
Barbara Emmons, City Secretary  
City of Bevil Oaks, Texas

**CITY OF BEVIL OAKS**  
**PROCUREMENT POLICY APPLICABLE TO ALL PROCUREMENTS MADE WITH**  
**FEDERAL FUNDS**

Adopted 10-05-2021

**PREAMBLE**

All procurements made by the City of Bevil Oaks ("City") involving the expenditure of Federal funds must be conducted in accordance with the procedures set forth in this Policy. This Policy is in accord with all applicable Federal, State, and local government statutes and regulations, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. §§ 200.317 to 200.326.

It is the policy of the City to conduct all procurements in the highest ethical manner, and in accordance with all applicable laws and regulations. To the extent required by law and regulation, and the maximum extent practical, the City will conduct all procurement transactions in a manner providing full and open competition, consistent with the standards set forth 2 C.F.R. § 200.319.

Subject to specified cost thresholds and documented delegation of authority, all procurements will be reviewed by [Mayor or Mayor Pro Tem] to ensure compliance with this Policy.

**I. SOLICITATIONS**

Procurements subject to this Policy will be made on the basis of a written solicitation, after careful consideration by City Staff (with, as applicable, the support of a selection committee) of the needs of the City and available resources. The written procedures in this Policy are intended to ensure that all solicitations meet the following Federal requirements as well as contracting best practices.

**A. Clear Description**

The solicitation must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. This description should include a written statement of work. 2 C.F.R. § 200.319(c)(1).

**B. Nonrestrictive Specification**

The description of the technical requirements must not contain features that unduly restrict competition. 2C.F.R. § 200.319(c)(1).

**C. Qualitative Requirements**

The description of the technical requirements 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. 2 C.F.R. § 200.319(c)(1). Product specifications should be limited to essential specifications only.

**a. Brand Name or Equal**

When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, "brand name

or equal” descriptions may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated. The need for a “brand name or equal” specification should be documented.

**b. Preference for Performance Specifications**

Product or service specifications based on performance, rather than designed specifications, are preferred. A performance specification describes an end result, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. Performance specifications 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.

**D. Requirements**

The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 C.F.R. §200.319(c)(2). All solicitations for competitive proposals must notify offerors that the City reserves the right to award to other than the lowest-priced offeror. Generally, the City will make a best value determination, balancing cost against technical merits, in awarding competitive contracts.

**E. Type of Federal Funding**

The solicitation must acknowledge the source of the Federal funding for the contract, in compliance with the terms of its financial assistance award.

- a. The solicitation should inform prospective contractors that they will need to comply with all applicable Federal Laws, regulations, Executive Orders and requirements affecting the procurement. As appropriate, specific flow-down requirements may be included in the solicitation itself, in any resulting contract, or incorporated by reference.

**F. Contract Type**

The solicitation should state the type of contract that will be awarded.

**a. Fixed Price**

A fixed price contract provides for a firm price that remains irrespective of the contractor’s actual cost of performing the scope of work under the contract. The risk of performing the work, at the fixed price, is borne by the contractor. Fixed price contracts may include an economic price adjustment, incentives, or both.

**b. Cost Reimbursement**

Cost-reimbursement type contracts provide for payment of certain incurred costs to the extent provided in the contract. They normally provide for the reimbursement of the contractor for its reasonable, allocable, actual, and allowable costs, with an agreed-upon fee. There is a limit to the costs that a contractor may incur at the time of contract award, and the contractor may not exceed those costs without the City’s prior approval. Cost allowability is determined by Federal regulations. There are many varieties of cost-reimbursement contracts, such as cost-plus- fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee. Because the City incurs more risk in a cost reimbursement contract, these types of contracts should only be entered into after a careful analysis of the benefits compared to other contract types.

**c. Time and Materials Contracts**

A time and materials type contract is a contract whose cost to the City is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. 2 C.F.R. § 200.318(j)(1)(i) and (ii). This type of contract is used if no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

d. **Cost Plus Percentage of Cost**

The use of cost plus percentage of cost and cost plus a percentage of construction cost methods of contracting are prohibited.

**G. Prohibitions**

Certain provisions that unduly restrict competition are prohibited. 2 C.F.R. § 200.319(a). The following are some examples of these prohibited provisions. Note that the provisions described below are not prohibited when they are improper or excessive. For example, some qualifications and experience may be required for a particular type of contract; only "excessive" or "unnecessary" requirements are not allowed:

a. **Excessive Qualifications**

Placing unreasonable requirements on firms in order for them to qualify to do business. 2 C.F.R. § 200.319(a)(1).

b. **Unnecessary Experience**

Requiring unnecessary experience. 2 C.F.R. § 200.319(a)(2).

c. **Unnecessary Bonding**

Requiring excessive bonding. 2 C.F.R. § 200.319(a)(2).

d. **Improper Qualification**

Using improper prequalification procedures that conflict with 2 C.F.R. § 200.319(d).

e. **Retainer Contract**

Making a noncompetitive solicitation only to a person or firm on retainer contract where that award is not for property or services specified for delivery under the scope of work of the retainer contract. 2 C.F.R. § 200.319(a)(4).

f. **In-State, Local, or Tribal Geographic Preferences**

Imposing prohibited in-state, local, or tribal geographic preferences that conflict with 2 C.F.R. 200.319(b).

g. **Organizational Conflicts of Interest**

Allowing entities to submit bids or proposals in response to the solicitation where there would be a prohibited organizational conflict of interest. 2 C.F.R. § 200.319(a)(5).

## II. METHODS FOR PROCUREMENT

Procurements shall be made using one of the following methods: (A) Micro-Purchases (B) Small Purchase procedures, (C) Competitive sealed bids, (D) Competitive negotiations, (E) Non-competitive negotiation. All procurements shall be made in accordance with these procedures.

**A. Micro-Purchases**

Purchases below the Simplified Acquisition Threshold may be awarded without soliciting competitive proposals if the City considers the price to be reasonable. Efforts

will be made to get the lowest and best price, but written records of such efforts are not necessary. Procurements may not be disaggregated for the purpose of falling below the Micro-Purchase threshold.

**B. Small Purchases**

Purchases of supplies, equipment and services which cost below **\$50,000** require written supplier estimates but no formal is required. The City will solicit a verbal or written response from at least three (3) vendors and will document why the vendor was selected if it is not the lowest priced offeror. If no such responses are available, a statement explaining the procurement will be prepared and filed.

**C. Competitive Sealed Bids**

The use of sealed bids will be employed when detailed specifications for the goods or services to be procured can be prepared and the primary basis for award is cost. When the cost of a contract, lease or other agreement for materials, supplies, equipment or contractual services, other than those personal (procuring the services of an individual for staff augmentation services) or professional (provided by a degreed, licensed professional, principally engineering, accounting, and legal services), exceeds **\$50,000**, an Invitation for Bids ("IFB") notice will generally be prepared. This notice will be published in the City newspaper of record and/or such other places as the City deems appropriate. This notice will appear at least fourteen (14) days before the due date for bid proposals. The City may also solicit sealed bids from responsible prospective suppliers by sending them a copy of such notice. To the extent possible, City Staff is encouraged to maintain an open Bidders List.

The IFB will include a complete, accurate and realistic specification and description of the goods or services to be procured, any required bid deposit, the amount of a payment bond and bond performance required (if applicable), the location where bid forms and specifications may be secured, the time and place for opening bids, and whether the bid award will be made on the basis of the lowest price or the lowest evaluated price. If the lowest evaluated price is used, the measurable criteria to be used must be stated in the IFB.

Sealed bids will be opened in public at the time and place stated in the IFB. The bids will be tabulated by the **TABULATOR** at the time of bid opening. The results of the tabulation and the bid procurements will be examined for accuracy and completeness by the **EXAMINER** who will make recommendations to the City. In addition, the City shall determine that all firms are responsive and responsible. The City will make the decision as to whom the contract shall be awarded. After the bid award is made by the City, a contract will be prepared for execution by the successful bidder. After the contract is signed, all bid deposits will be returned to all unsuccessful bidders.

The City may cancel an Invitation for Bid or reject all bids if it is determined that such is in the best interests of the City. Bidders will be notified in writing of such cancellation or rejection. The City may allow a vendor to withdraw a bid if requested at any time prior to the bid opening. Bids received after the time set for bid opening shall be returned to the vendor unopened. Bids which do not accept all terms and conditions of the IFB shall be deemed to be non-responsive and will be rejected. Any

changes to the bidding terms and conditions shall be communicated to all bidders, and all bidders will have an equal chance to submit a bid responsive to those changed terms and conditions.

#### **D. Competitive Negotiations**

The City will use competitive negotiations, regardless of contract amount, upon a written determination that either of the following conditions apply:

- a. Specifications cannot be made specific enough to permit the award of a bid on the basis of either the lowest bid or the lowest evaluated bid price (in other words, sealed bidding is not feasible); or
- b. The services to be procured are professional (provided by a degreed, licensed professional, principally engineering, accounting, and legal services) in nature.

Competitive negotiations will proceed as follows:

1. Proposals will be solicited through advertisement in the City newspaper of record and/or such other places as the City deems appropriate; additionally, a Request for Proposal (RFP) may be prepared and mailed, emailed, or faxed to qualified vendors. The RFP will describe services needed and identify the factors to be considered in the evaluation of proposals and the relative weights assigned to each selection factor. The RFP will also state where further details regarding the RFP may be obtained. The RFP will call attention to the applicable regulations. Requests for proposals will always include cost as a selection factor.
2. Award must be made to the offeror whose proposal is determined in writing by the City to be the most advantageous to the City with price and other factors considered. This evaluation and award process contemplates a balancing of cost and technical merit in arriving at a determination as to which proposal provides the best value to the City. Evaluations must be based on the factors set forth in the Request for Proposal and a written evaluation of each response prepared. The selection committee may contact the firms regarding their proposals for the purpose of clarification and record in writing the nature of the clarification. If it is determined that no acceptable proposal has been submitted, all proposals may be rejected. New proposals may be solicited on the same or revised terms or the procurement may be abandoned.

For the procurement of certain professional services, an alternative to RFPs may be used. The City may publish a Request for Qualifications. RFQ's are handled in a similar method to RFP's with the exception that cost is not a factor in the initial evaluation. The selection committee will evaluate the responses and rank them by comparative qualifications. The highest scoring person or firm will be contacted and the City will negotiate cost. If the City is unable to negotiate a satisfactory cost arrangement, the second highest scoring person or firm will be invited to negotiate. The City will maintain a written record of all such negotiations.

#### **E. Noncompetitive Negotiations**

The City requires competitive bids for purchases of goods or services including consulting services) over \$50,000; however, some exceptions apply.

In some circumstances, when competition cannot be obtained or the situation necessitates the required number of competitive bids to be reduced, a Sole Source or Reduction Justification Form must be submitted. The following information is a guide for requesting the waiver or reduction of competitive bids on RFPs for goods or services greater than \$50,000. The City may purchase goods and services through non-competitive negotiations when it is determined in writing by the City that competitive negotiation or bidding is not feasible and that:

**1. SOLE SOURCE DEFINITION AND CRITERIA**

A single supplier that is exclusively capable of meeting the City's requirements within the time available, including emergency and other situations, which preclude conventional planning and processing. These situations include:

- a. **One-of-a-Kind/Specialized** – the commodity or service has no competitive product or must meet specialized seaport, boat or marine requirements, or specialized professional or technical services, and is available from only one supplier.
- b. **Compatibility** – the commodity or service must match an existing brand of equipment for compatibility and is available from only one vendor.
- c. **Replacement Part** – the commodity is a replacement part for a specific brand of existing equipment and is available from only one supplier.
- d. **Delivery Date** – only one supplier can meet necessary delivery requirements.
- e. **Emergency** – URGENT NEED for the item or service does not permit soliciting competitive bids; including purchases needed to address major facility failures, damages due to disasters, or purchases necessary to address immediate safety and security issues.
- f. Only one satisfactory proposal is received through RFP or RFQ
- g. The Federal or State awarding agency has authorized the particular type of noncompetitive negotiation.

Procurement by noncompetitive negotiation requires the strictest attention to the observation of impartiality toward all suppliers. The City must approve all procurements by non-competitive negotiation when only one supplier is involved or only one bid or response to an RFP/RFQ is received.

- F. Bids will be accepted only from those contractors who have a proven record of ability to successfully complete the scope of work being bid. References will be requested along with the contractor's bid proposal. Any contractors submitting a bid must produce (along with his/her bid documents) written proof of liability insurance and worker's compensation coverage. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources in awarding contracts.

**III. CONTRACTS**

Generally, all procurement in excess of the Simplified Acquisition Threshold will be memorialized and supported by a written contract. Where it is not feasible or is impractical to prepare a contract, a written finding to this effect will be prepared and some form of documentation regarding the transaction will also be prepared.

- A. All contracts will contain language which allows the City the opportunity to cancel any contract for cause. Said cause shall include (but not be limited to) demonstrated lack of ability to perform the work specified, unwillingness to complete the work in a timely fashion, cancellation of liability insurance or worker's compensation, failure to pay suppliers or workers, unsafe working conditions caused by the contractor, failure to comply with Davis-Bacon wage laws (where applicable), failure to keep accurate and timely records of the job, or failure to make those records available to the City (on request) or any other documented matter which could cause a hardship for the City if a claim should arise or the work not be completed on schedule at the specified cost.
- B. All contracts will contain a termination for convenience provision, which allows the City to cancel the contract without fault on the part of the contractor. In the event of a termination for convenience, the contractor will receive reimbursement and/or pro-rate payment for costs and work done until the point of termination, but not anticipated profits on the work that was cancelled. The termination provision will specify the procedures for the contractor to submit a claim for termination costs.
- C. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "Federally assisted construction contract" in 41 C.F.R. § 60-1.3 must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth in 2 C.F.R. §200.326. These provisions will be provided to all bidders

#### **IV. DOCUMENTATION**

All source documents supporting any given transaction (receipts, purchase orders, invoices, RFP/RFQ data and bid materials) will be retained and filed in an appropriate manner. Where feasible, source documents pertinent to each individual procurement shall be separately filed and maintained. Where it is not feasible to maintain individual procurement files, source documents will be filed and maintained in a reasonable manner (examples include chronologically, by vendor, by type of procurement, etc.). Whatever form of documentation and filing is employed, the purpose of this section is to ensure that a clear and consistent audit trail is established. At a minimum, source document data must be sufficient to establish the basis for selection, basis for cost, (including the issue of reasonableness of cost), rationale for method of procurement and selection of contract type, and basis for payment.

#### **V. LOCALLY OWNED, MINORITY-OWNED, FEMALE-OWNED AND SMALL BUSINESSES**

All necessary affirmative steps will be taken and documented to solicit participation of small and minority businesses, women's business enterprises, and labor surplus area firms. Where possible and feasible, delivery schedules will be established and work will be



subdivided to maximize participation by small businesses or minority- or women-owned businesses. Subdivided components will be bid as a separate contract. A list of locally owned, minority-owned, female-owned, and small businesses and also minority businesses located within the trade region shall be used when issuing IFBs, RFPs and RFQs. This list shall also be consulted when making small purchases. The City will use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce when appropriate. The successful bidder will be required to use these same criteria in selection of suppliers and subcontractors whenever possible.

## **VI. CODE OF CONDUCT**

### **A. Conflict Of Interest**

No City member, employee, consultant, elected official, appointed official or designated agent of the City will take part or have an interest in the award of any procurement transaction if a conflict of interest, real or apparent, exists. A conflict of interest occurs when the official, employee or designated agent of the City, partners of such individuals, immediate family members, or an organization which employs or intends to employ any of the above has a financial or other interest in any of the competing firms, or will otherwise benefit financially or otherwise from a contract award.

No City member, employee or designated agent of the City may acquire a financial interest in or benefit in any way from any activity which uses any Federal funding, nor shall they have any interest in any contract, subcontract or agreement for themselves or any family members.

NOTE: These rules apply to all named parties and shall be effective for the period of service and for one year after leaving said position (or office, in the case of elected officials).

### **B. Acceptance of Gratuities**

No City member, employee or designated agent of the City shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, subcontractors or potential subcontractors.

### **C. Penalties**

Any City member, employee or designated agent of the City who knowingly and deliberately violates the provisions of this code will be open to civil suit by the City without the legal protection of the City. Furthermore, such a violation of these procurement standards is grounds for dismissal by the City (if an employee) or such sanctions as available under the law (if an elected official).

Any contractor or potential contractor who knowingly and deliberately violates the provisions of these procurement standards will be barred from future transactions with the City.

## **VII. ADDITIONAL PROVISIONS**

City Federally funded contracts are subject to a variety of required statutes, regulations, and contract clauses. While it is the responsibility of bidders and offerors to be aware of and comply with those requirements, City staff shall include applicable requirements in all the City contracts to the maximum extent possible, either in full text, via addendum or attachment, or by reference. The list below is not exhaustive, and other provisions may apply based on the type of work being performed and the dollar amount of the contract. The provisions below are common to many covered contracts:

**A. Labor and Employment Laws and Regulations**

A variety of construction and non-construction labor and employment laws and regulations are required as a condition of the City's Federal funding. These are assembled at 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, and include provisions related to Equal Employment Opportunity, Prevailing Wages, Anti-Kickback provisions, Overtime and Work Safety requirements, and a variety of whistleblower protections. In dealing with all potential bidders and offerors, City Staff should ensure that the applicable requirements are included in all solicitations and contracts. To the extent possible, City Staff should highlight these requirements to bidders and offerors unfamiliar with or inexperienced in Federally funded projects.

**B. Rights to Inventions Made Under a Grant or Contract**

If a contract awarded by the City may result in the creation of protectable intellectual property, including a patentable invention, copyrighted material, trade secret or technical data, or any other invention or discovery, the requirements of 37 CFR § 401 may apply.

**C. Environmental Regulations**

Contracts over \$150,000 require the contractor to comply with the Clean Air Act and Federal Water Pollution Control Act. Specific provisions and requirements are set forth in 2 C.F.R. Part 200, Appendix II.

**D. Contracting with Suspended or Debarred Persons or Entities**

City shall not enter into any agreement with any person or entity subject to Federal Debarment or suspension, nor consent to a subcontract with any such person or entity. A list of all such persons or entities can be found at [www.sam.gov](http://www.sam.gov). The City should obtain written certification from all contractors that they are not suspended or debarred from federal procurements.

**E. Byrd Anti-Lobbying Amendment**

The following provision should be included in each contract over \$100,000 (Federal Byrd threshold):

“Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds

that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

Adopted by the City this 05 day of October, 2021.

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(NAME)

\_\_\_\_\_  
(TITLE)