

**RESOLUTION NO. R-2022-02**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE FEDERAL GRANT PROCUREMENT POLICY, ATTACHED AS EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bastrop Purchasing Policy includes adoption of federal procurement laws; and

**WHEREAS**, the City of Bastrop has been awarded a contract through the GLO CDBG-MIT program; and

**WHEREAS**, Federal Regulations require that with funding awards, the recipient adopt additional federal regulations that are not included in our current adopted Purchasing Policy; and

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

**SECTION 1:** The City Council hereby approves the Federal Grant Procurement Policy, which is attached as Exhibit A.

**SECTION 2:** Any prior resolution of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.

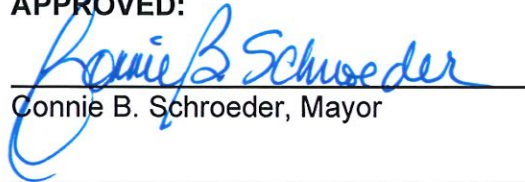
**SECTION 3:** Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

**SECTION 4:** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop, Texas on the 11<sup>th</sup> day of January 2022.

**CITY OF BASTROP, TEXAS**

**APPROVED:**

  
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Connie B. Schroeder, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alan Bojorquez, City Attorney

## CITY OF BASTROP FEDERAL GRANT PROCUREMENT POLICY

The City of Bastrop follows State of Texas and Federal 2CFR 200.318-200.327 and Appendix II to Part 200 procurement law and guidance in the purchasing and contract management of goods and services. Additional policy guidance below addresses federal purchasing requirements as required by 2 CFR 200 pertaining to the expenditure of federal grant funds.

### **A. Standards of Conduct**

Public employment is a public trust. It is the policy of the City of Bastrop to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the City of Bastrop. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City of Bastrop procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the City of Bastrop also observe the ethical standards prescribed herein.

### **Code of Ethics**

- 1) **Personal Gain.** It shall be a breach of ethics to attempt to realize personal gain through public employment with the City of Bastrop by any conduct inconsistent with the proper discharge of the employee's duties.
- 2) **Influence.** It shall be a breach of ethics to attempt to influence any public employee of the City of Bastrop to breach the standards of ethical conduct set forth in this code.
- 3) **Conflicts of Interest.** It shall be a breach of ethics for any employee of the City of Bastrop to participate directly or indirectly in procurement when the employee knows that:
  - 1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
  - 2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.
  - 3) any other person, business or organization with which the employee or any members of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

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- 4 Gratuities. It shall be a breach of ethics to offer, give or agree to give any employee or former employee of the City of Bastrop, or for any employee or former employee of the City of Bastrop to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, requesting for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore pending before this local government.
- 5 Kickbacks. It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the City of Bastrop, or any person associated therewith, as an inducement for the award of a subcontract or order.
- 6 Contract Clause. The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation, therefore.
- 7 Confidential Information. It shall be a breach of ethics for any employee or former employee of the City of Bastrop knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.
- 8 The non-federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and condition of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.214.
- 9 The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price.
- 10 (1) The Non-Federal entity may use a time-and-material type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
  - (i) The actual cost of materials; and
  - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

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(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- 11 The non-Federal entity alone must 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. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

### **Competition**

All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

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(7) Any arbitrary action in the procurement process.

The non-Federal entity must conduct procurements 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. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be 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.

The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

### **Five Methods for Procuring with Federal Funds**

2 CFR § 200.320 provides for five methods that must be used when making purchases with Federal funds. In some cases, these Federal methods are more restrictive than State requirements; in other cases, the State requirements are more restrictive than these Federal methods. In all cases, the City of Bastrop affirms the more restrictive requirements or methods must be followed when making purchases with Federal funds.

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The type of purchase method and procedures required depends on the cost (and type, in some cases) of the item(s) or services being purchased.

- Micro-purchases
- Small purchase procedures
- Sealed bids
- Competitive proposals
- Noncompetitive proposals (sole source)

### **Micro-Purchases (Purchases up to \$3,000.00)**

Federal methods provide for procurement by *micro-purchase*. *Micro-purchase* is defined in 2 CFR § 200.320(a) as a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed \$3,000.00. The micro-purchase method is used in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

The City of Bastrop utilizes the micro-purchases method for acquiring supplies or services that do not exceed an aggregate amount of \$3,000.00 if the price is reasonable. The program manager responsible for the Federal award determines if the price is reasonable.

Quotes are not required but encouraged. If quotes are obtained for items under \$3,500.00, they should be kept in the department and attached to the requisition.

### **Small Purchase Procedures (Purchases between \$3,000.01 and \$149,999.99 in the Aggregate)**

The Federal threshold for small purchase procedures is \$150,000. 2 CFR § 200.320(b).

*Small purchase procedures* (as defined in 2 CFR § 200.320[b]) may be used in those relatively simple and informal procurement methods for securing non-personal contracted services, supplies, or other property that do not cost more than \$149,999.99.

For purchases funded from local funds, to obtain the most competitive price, the City of Bastrop, may, at its option, obtain price quotes for items costing less than \$150,000. Unlike the mandatory competitive procurement described for purchases over \$150,000, if an item to be paid from local funds costs less than \$150,000, the City of Bastrop may utilize price quotations or competitive procurement process (purchasing cooperatives, sole source, an existing RFP/bid or a new RFP/bid) to stimulate competition and to attempt to receive the most favorable pricing.

However, if using State or Federal funds to purchase goods or services, *price or rate quotations must be obtained* from an adequate number of qualified sources for all purchases between \$3,000.01 and \$49,999.99 or use the competitive procurement process. The City of Bastrop must

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obtain more than one price or rate quote unless using a purchasing cooperative, existing Bid/RFP or sole source vendor, in which case, the prices have already been awarded. If purchasing from a purchasing cooperative or existing Bid/RFP, the departments can elect to obtain only one quote to purchase the goods or services although it is recommended to obtain more than one quote. Such price or rate quotations may be obtained orally and/or documented in writing, and the City of Bastrop must demonstrate that price or rate quotations were obtained from an adequate number of qualified sources.

### **Purchases \$150,000 or More in the Aggregate**

According to Texas law, one of the following competitive methods must be used for purchases of \$150,000 or more in the aggregate:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals, for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (7) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

In addition, one of the three following methods must be used, depending on the circumstance described below, when purchasing with Federal funds: sealed bids (formal advertising); competitive proposals; or noncompetitive proposals (sole source).

#### *Sealed Bids (Formal Advertising)*

Bids are publicly solicited and a *firm fixed-price contract* (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.



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If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publicly advertised.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
- All bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publicly.
- A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

### *Competitive Proposals*

A competitive proposal is normally used with more than one source submitting an offer, and either a *fixed price* or a *cost-reimbursement* type contract is awarded. (A *cost reimbursement contract* reimburses the contractor for actual costs incurred to carry out the contract.) Competitive proposals are generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and must identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified sources.
- The City of Bastrop must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

When using Federal funds, the City of Bastrop may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used

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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.

### *Noncompetitive Proposals (Sole Sourcing)*

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

- The item is available only from a single source and an equivalent cannot be substituted. This must be documented.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- After solicitation of a number of sources, competition is determined inadequate.

Additionally, *State* requirements related to sole source purchasing are, in some ways, more restrictive. In addition to the Federal requirements above, sole source purchases must meet established criteria:

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly;
- A film, manuscript, or book;
- A utility service, including electricity, gas, or water; and
- A captive replacement part or component for equipment.

According to State requirements, sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000.

In this case, the City of Bastrop must document why only this product can meet their needs and that it is not available from any other vendor. In all cases, the City of Bastrop will obtain and retain documentation from the vendor which clearly delineates the reasons which qualify the purchase to be made on a sole source basis.

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### **Contracting with Historically Underutilized Businesses (HUB), Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Firms**

The City of Bastrop will take all necessary steps to affirmatively assure HUBs, small and minority businesses, women’s business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible. Affirmative steps will include the following:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above.

### **Domestic preferences for procurements.**

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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### Procurement of recovered materials.

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 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### Cost/Price Analysis for Federal Procurements in Excess of \$150,000

In accordance with the requirements in 2 CFR § 200.324, the City of Bastrop will make independent estimates of the goods or services being procured before receiving bids or proposals to get an estimate of how much the goods and services are valued in the current market.

To accomplish this, before bids and proposals are received, the City of Bastrop conducts either a price analysis or a cost analysis, depending on the type of contract, in connection with every procurement with Federal funds in excess of \$150,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the City of Bastrop will come to an independent estimate prior to receiving bids or proposals, 2 CFR § 200.324(a).

Accordingly, the City of Bastrop performs a cost or price analysis in connection with every Federal procurement action in excess of \$150,000, including contract modifications, as follows:

**Cost Analysis → Non-competitive Contracts:** A cost analysis involves a review of proposed costs by expense category, and the Federal cost principles apply, which includes an analysis of whether the costs are allowable, allocable, reasonable, and necessary to carry out the contracted services. In general,

- A cost analysis must be used for all non-competitive contracts, including sole source contracts.
- The Federal cost principles apply.

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- All *non-competitive contracts* must also be awarded and paid on a *cost-reimbursement basis*, and not on a fixed-price basis.
- In a cost-reimbursement contract, the contractor is reimbursed for reasonable actual costs incurred to carry out the contract.
- Profit must be negotiated as a separate element of the price in all cases where there is no competition.

When performing a *cost analysis*, the City of Bastrop negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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, 2 CFR § 200.323(b).

**Price Analysis → Competitive Contracts:** A *price analysis* determines if the lump sum price is fair and reasonable based on current market value for comparable products or services. In general,

- A price analysis can only be used with *competitive* contracts and is usually used with fixed-price contracts. It cannot be used with non-competitive contracts.
- Compliance with the Federal cost principles is not required for fixed-price contracts, but total costs must be reasonable in comparison to current market value for comparable products or services.
- A competitive contract may be awarded on a fixed-price basis or on a cost-reimbursement basis. If awarded on a cost-reimbursement basis, the Federal cost principles apply and costs are approved by expense category, and not a lump sum.

Costs or prices based on *estimated* costs for contracts are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable costs under the Federal cost principles.

### **Federal awarding agency or pass-through entity review.**

The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency 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

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specifications, with such review usually limited to the technical aspects of the proposed purchase.

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.

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.

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.

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.

### **Bonding requirements.**

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

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

### Contract Administration

The City of Bastrop maintains the following oversights to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders, 2 CFR § 200.318(b). The program manager/director of the Federal award is responsible for monitoring contractor performance. The manager/director will compare actual performance of contract against projected performance and have the contractor explain any differences. They may also compare fees paid to date to contractor versus how far along the contractor is in performing the contractual duties. The manager/director may establish surveys of those directly benefitted by the contractor’s work for feedback purposes.

To ensure proper administration of contracts and any subgrants that may be awarded by the City of Bastrop, the City of Bastrop uses the following guidelines to determine whether each agreement it makes for the disbursement of Federal funds is a *contract*, whereby funds are awarded to a *contractor*, or a *subaward*, whereby funds are awarded to a *subrecipient*. The substance of the relationship is more important than the form of the written agreement, 2 CFR § 200.330.

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### *Subawards/Subgrants*

A *subaward/subgrant* is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. The City of Bastrop determines who is eligible to receive what Federal assistance, and a *subrecipient/subgrantee*:

- Has its performance measured in relation to whether objectives of a Federal program are met
- Has responsibility for programmatic decision making
- Is responsible for adhering to applicable Federal program requirements, and
- In accordance with the subgrant agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the City of Bastrop.

### *Contracts*

A *contract* is for the purpose of obtaining goods or services for the City of Bastrop 's own use and creates a procurement relationship with the contractor.

A *contractor*:

- Provides goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Normally operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the Federal program, and
- Is not subject to compliance requirements of the Federal program as a result of the contract, though similar requirements may apply for other reasons

### **Documentation for Contracts**

The City of Bastrop maintains the following written documentation, at a minimum, for each contract paid with Federal funds:

1. A copy of the written, signed contract/agreement for services to be performed
2. The rationale or procedure for selecting a particular contractor
3. Evidence the contract was made only to a contractor or consultant possessing the ability to perform successfully under the terms and conditions of the contract or procurement



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4. Records on the services performed – date of service, purpose of service – ensuring that services are consistent and satisfactorily performed as described in the signed contract or purchase order
5. Documentation that the contractor was not paid before services were performed, and
6. Records of all payments made (such as a spreadsheet or report generated from the general ledger), including the total amount paid to the contractor

### **Payment Only After Services Are Performed**

For both State and Federally funded contracts, it is not permissible under Texas law to pay a contractor or consultant in *advance* of performing services. Advance payment to contractors is considered “lending credit” to the contractor and is prohibited under the *Texas Constitution*, Article 3, §§ 50 and 52. For ongoing services that occur monthly, payment can be made at the end of every month (based on a proper invoice submitted by the contractor and verification of work performed) for services performed during the month, or some other similar arrangement.

Consultants and contractors will not be paid without having a properly signed and dated contract or other written agreement in place which clearly defines the scope of work to be performed, the beginning and ending dates of the contract, and the agreed-upon price. The contract should also include a description of the payment procedures.

Upon performance of services (at contract milestones or upon completion of services), the contractor is required to submit an *invoice* to the City of Bastrop that contains at a minimum the following:

- a clear identification of the contractor/consultant, including name and mailing address
- a corresponding contract (or written agreement) number, if applicable
- the dates (beginning and ending date) during which the services were performed (i.e., billing period)
- a description of the services/activities completed during the billing period
- the total amount due to the contractor for the billing period

By submitting a properly-prepared invoice, the contractor is certifying that it is true and correct.

### **Verification of Receipt of Goods and Services Provided by Contractors**

If the purpose of the contract or purchase order is to deliver goods, the City of Bastrop will designate the appropriate staff to verify that the quantity and quality of goods were as specified

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in the contract/purchase order. The receiving report and procedures used in all other State/local purchases will be used for all Federal purchases.

If the purpose of the contract is to purchase services, the contract manager along with the County Judge/City Mayor will verify that the quality and scope of services were received as specified in the contract.

### **Prompt Payment to Vendors/Contractors**

The City of Bastrop pays all vendors/contractors within thirty (30) days of receipt of a proper invoice and the receipt of the goods or services in accordance with the [\*Texas Prompt Payment Act\*](#). *Government Code, Chapter 2251, Subchapter A, for all contractors, and Property Code, Chapter 28 for Construction Contractors.*

### **Suspension and Debarment**

The City of Bastrop will ensure, prior to award, that all contractors have met all the eligibility requirements outlined in state and Federal law. The following steps will be taken to ensure contractor eligibility for all services procured.

- Contractors: All contractors, including professional consulting and engineering firms, must be cleared via a search of the Federal System of Award Management ('SAM') to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov/SAM/pages/public/searchRecords/search.jsf>.
- Subcontractors: Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.