

PROCUREMENT PROCEDURES

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PROCUREMENT PROCEDURES

I - Introduction

All procurements made by the TOWN OF FULTON 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, 24 CFR 85.36, 2 C.F.R. §§ 200.317 to 200.326 and Appendix II to Part 200 – Contract provisions for non-federal entity contracts under federal awards.

It is the policy of TOWN OF FULTON 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, TOWN OF FULTON 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 County Auditor to ensure compliance with this Policy. In the event of conflict, TOWN OF FULTON will follow the most stringent procedure provided for among the federal, state and local law.

1.1 Solicitations

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

- **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).
- **Nonrestrictive Specification**
The description of the technical requirements must not contain features that unduly restrict competition. 2C.F.R. § 200.319(c)(1).
- **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.
- **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.
- **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.
- **Requirements Offerors must fulfill**
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 TOWN OF FULTON reserves the right to award to other than the lowest-priced offeror.

- **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.
 - 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 (a sample list should be attached to the solicitation). As appropriate, specific flow-down requirements may be included in the solicitation itself, in any resulting contract, or incorporated by reference.
- **Procurement Review**

All procurements should be reviewed for:

 - unnecessary or duplicative items in accordance with 2 CFR 200.318(d), giving consideration to consolidating or breaking out procurements to obtain a more economical purchase and ensuring costs are “reasonable”;
 - opportunities 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; and
 - opportunities to use value engineering clauses in contracts for construction projects, where applicable.
- **Contract Type**

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

 - **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.
 - **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 RAC’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 TOWN OF FULTON 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 and prior approval of the federal/state agency.
 - **Time and Materials Contracts**
A time and materials type contract is a contract whose cost to TOWN OF FULTON 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, if the contract includes a ceiling price that the contractor exceeds at its own risk, and prior approval is obtained by the awarding State or Federal agency.
 - **Cost Plus Percentage of Cost or Percentage of Cost**
The use of cost-plus percentage of cost, cost plus a percentage of construction cost, and percentage of cost methods of contracting are prohibited.
- **Prohibitions**

Certain provision 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:

 - **Excessive Qualifications**
Placing unreasonable requirements on firms in order for them to qualify to do business. 2 C.F.R. § 200.319(a)(1).
 - **Unnecessary Experience**
Requiring unnecessary experience. 2 C.F.R. § 200.319(a)(2).
 - **Unnecessary Bonding**
Requiring excessive bonding. 2 C.F.R. § 200.319(a)(2).

- **Improper Qualification**
Improper prequalification procedures that conflict with 2 C.F.R. § 200.319(d).
- **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).
- **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).
- **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).
- **Brand Name**
Specifying only a “brand name” product instead of allowing “an equal” product to be offered.
- **Noncompetitive Contracts**
Noncompetitive contracts are disallowed except for when there is an approved exception by the Federal/State agency.

1.2 Methods of Procurement

TOWN OF FULTON will use one of the following methods of procurement:

- **Competitive Proposals (Administration/Professional Services - Traditional)** – For purchases where conditions for sealed bid are not appropriate. Preferred method for the procurement of administration and professional services. TOWN OF FULTON must use this procurement method if Administration is expected to exceed \$50,000.00.
- **Micro-purchases less than or equal to \$3,000** – The purchase of supplies or services that are in the aggregate less than or equal to \$3,000. For such purchases, TOWN OF FULTON may use simplified acquisition procedures instead of Small Purchase procedures. TOWN OF FULTON, to the extent practicable, distribute these purchases equitably among qualified suppliers.
- **Small Purchase** – The acquisition of supplies or services greater than \$3,000 and less than or equal to \$50,000. Small purchase procedures are relatively simple and informal procurement methods for securing services, supplies or other property. Price or rate quotations must be requested from at least three (3) qualified sources.
- **Sealed Bids (Formal Advertising)** – For purchases greater than \$50,000. Preferred method for construction contracts. 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.
- **Noncompetitive Proposals** – Procurement through solicitation of a proposal from only one source and may be used only under special circumstances which are applicable for all purchase levels.
- **Purchase Orders**- TOWN OF FULTON ~~requires a purchase order for purchases over \$250.00~~does not use purchase orders; however, other documentation for non-routine expenditures is used and approved by the comptroller and mayor.
Source: 2 CFR 200.320.

1.3 Cost- Price Analysis

TOWN OF FULTON must perform a Cost or Price Analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (i.e., >\$150,000) including contract modifications. TOWN OF FULTON must make independent estimates before receiving bids or proposals (2 CFR 200.323).

TOWN OF FULTON will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. TOWN OF FULTON will consider complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontract, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

1.4 Conflict of Interest

The TOWN OF FULTON's adopted Code of Conduct/Conflict of Interest Policy applies to all federal procurement matters.

II - Competitive Proposals (Administration and Professional Services Contracts)

The Competitive Proposal procurement method applies to all administration and professional services contracts. Competitive Proposal procurement is used when conditions are not appropriate for the use of sealed bids and is the preferred method of selection of professional services, such as grant administration, engineering, architectural, or surveying services. Unlike sealed bidding, the competitive proposal method permits consideration of technical factors other than price and negotiation of contract price or estimated cost, and other contract terms and conditions. All contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

2.1 Procurement - Administration Services and the Professional Services of Engineering/ Architectural/ Surveying

The steps for procuring administration services (including other professional services), and engineering, architectural, and land surveying services are similar with one major exception. For the procurement of engineering, architectural, and land surveying services, price may NOT be used as a selection factor and TOWN OF FULTON must choose the most highly qualified provider of these services on the basis of demonstrated competence and qualifications. Once the most qualified respondent is chosen, then a fair and reasonable price may be negotiated. (See also 2 CFR 200.320(d)(5) and Texas Government Code, §2254.004.)

In contrast, for administration services and other professional services such as accounting (CPA), grant writing, and real estate appraising (state certified or state licensed), price may be a selection factor and should be taken into consideration.

The professional services generally used means services within the scope of the practice, as defined by state law, of: accounting; architecture; landscape architecture; land surveying; professional engineering; real estate appraising; or provided in connection with the professional employment or practice of a person who is licensed or registered as: a certified public accountant; an architect; a landscape architect; a land surveyor; a professional engineer; or a state certified or state licensed real estate appraiser.

All administration and professional services must be procured competitively, regardless of the source of funds that will pay for the service contracts unless approved in advance by the federal or state agency. TOWN OF FULTON must adhere to the State of Texas' Professional Services Procurement Act (Texas Government Code, Chapter 2254).

If TOWN OF FULTON is a partner recipient of a federal or state grant, and the local government entity enters into a contract with a grant administrator in compliance with Federal and State procurement laws for grant administration services, TOWN OF FULTON will utilize the services of the grant administrator secured.

Procurement procedures must be performed prior to the performance of any work by the service contractor. Federal and matching funds may not be used to pay/reimburse for services provided prior to the date federal/state grant contract with the exception of eligible pre-award costs/activities approved in the pre-agreement process

2.2 Step by Step Selection Procedures for Competitive Proposal (Traditional)

For engineering and other Professional Services providers, as well as Administration Services expected to exceed \$50,000, the Grant Recipient must use the full (Traditional) Competitive Proposal method.

STEP 1: Establish local Selection Review Committee

The Selection Review Committee establishes the criteria or evaluation factors to be used for selection and rating of competing respondents. The committee must include at least one local elected official or a city/county employee with authority to act on behalf of the local elected official in this if the city/county is a joint grant recipient.

The selection committee members shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review as per the Conflict of Interest Policy.

STEP 2: Determine the Scope of Services

The scope of work for a professional services or administration services contract describes all desired tasks that TOWN OF FULTON expects a professional services or administration services provider to perform under a contract. The scope of work should itemize tasks needed, with timeframes and achievable goals as appropriate and is the basis for the Request for Proposals (RFP)/Request for Qualifications (RFQ) and services contract.

A contractor that intends to respond to the Request for Proposals may provide information on federal/state procurement procedures, but may NOT participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.

STEP 3: Establish Written Selection Criteria

The committee’s written selection criteria should include, at a minimum, a clear and accurate description of the technical requirements of the services to be procured. Such descriptions shall not contain features that unduly restrict competition. TOWN OF FULTON will establish a scoring method which assigns weighted values to each factor.

STEP 4: Develop the Request for Proposals/Qualifications (RFP/RFQ) Package

TOWN OF FULTON must develop a RFP (Administration and other Professional Services)/RFQ (Engineering/Architectural/Surveying Services) package to issue to potential respondents. RFP/RFQ’s must identify all evaluation criteria factors and their relative importance.

Step 4.A: RFP of Administration and other Professional Services Contracts other than Engineering/ Architectural/Surveying Services

The RFP should include the following components:

- The request for proposal, including specifications and attachments, must clearly describe the scope of services required and identify the factors that will be used to evaluate proposals, including the weighted criteria;
- Request the following as a response: a statement of qualifications; proposed cost of services/fee structure; related experience with federal programs; capacity to perform the specific proposed task; and references – a list of past/current clients so that the proposals can be ranked based on past performance. The selection committee should contact these references and evaluate the respondent’s experience, work performance, and capacity to perform.

Step 4.B: RFQ for Engineering/Architectural/Surveyor Services

The RFQ for Engineering/Architectural/Surveyor Services provides detailed instructions to respondents and the criteria to be used in evaluating proposals. The RFQ should include the following components:

- The request for qualifications, including specifications and attachments, must clearly describe the scope of services required and identify the factors that will be used to evaluate proposals.
- The RFQ should request that the proposal include/address the following factors:
 - Statement of qualifications
 - Work experience

- Capacity to perform the specific proposed task
- Technical expertise
- Ability to meet schedules
- Proximity to the area of the proposed work
- Familiarity with the area of the proposed work
- References – list of past/current clients; etc.

STEP 5: Advertise the RFP/RFQ

In order to create competition for the work, the Grant Recipient must advertise the RFP/RFQ. A sample advertisement is provided that can be altered for the appropriate service. The Grant Recipient must:

Advertise in a locally distributed newspaper. The solicitation must be advertised for at least fourteen (14) days before the proposal submission deadline. Adjustments to bid delivery times will be made based upon the complexity of the solicitation, HUB considerations, and other pertinent considerations determined by RAC.

Retain a tear sheet/full-page advertisement/photo copy with publisher’s identification and date/publisher’s affidavit for proof of advertising for monitoring purposes.

STEP 6: Send RFP/RFQ to at least Five (5) Individuals/Firms

Prepare a list of potential firms/individuals. TOWN OF FULTON will follow its adopted Policy to take steps to encourage proposals from small (SBE’s), minority (MBE’s), woman-owned businesses (WBEs), and businesses in Labor Surplus Areas.

Send the RFP/RFQ package to a minimum of five individuals/firms by email, fax, and/or return receipt mail.

- Document reasons for selecting such individuals/firms for local files.
- Document evidence of contacting five (5) individuals/ firms.
 - If email/fax, print verifiable evidence that email/fax sent. If mail, send return receipt.

The proposal deadline must allow at least 14 days after the RFP/RFQ was sent to these individuals/firms.

STEP 7: Evaluate and Rate the Proposals

After the proposal submission deadline, the selection committee must rate the proposals received by the deadline, using only the specific selection criteria identified in its RFP/RFQ. This selection process must be thorough, uniform, and well documented through the rating sheets.

For engineering, architectural, and surveying services, price/cost may not be considered or negotiated until after the bidder has been chosen.

STEP 8: Select Respondent

The selection committee recommends that the contract be awarded to the respondent with the highest total score (if this method is used) or that has the most qualifications in the proposal evaluation. The recommendation must meet the reasonable, responsive, and responsible tests according to federal procurement procedures:

- Reasonable - Refers to the most suitable, fit and appropriate respondent to accomplish the job in question.
- Responsible - Refers to the respondent that is able to fully perform the requirements of the contract and has the integrity and reliability that will assure good faith performance.
- Responsive - Refers to the respondent that has submitted a bid/proposal that fully conforms to the information requested in the RFP.

The Board of Directors/local governing body has the final authority to award contracts and is encouraged to follow the committee’s recommendation, but may select another respondent if the minutes of the Board/local governing body meeting include justification for the selection.

STEP 8A: Selecting the Respondent - For Administration and other Professional Services Contracts other than Engineering/Architectural/Surveyors Services

Determine the most responsive and responsible respondent whose proposal is most advantageous to the program, with price and other factors considered. TOWN OF FULTON must award contracts only to responsible contractors 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 Grant Recipient may conduct negotiations with those offerors who are deemed responsive and responsible and fall within a competitive price range, based on the Grant Recipient's evaluation of bidders' pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a best and final offer.

STEP 8B: Selecting the Respondent - For Engineering/Architectural/Surveying services

Determine the most qualified provider of services on the basis of demonstrated competence and qualifications.

Once the most highly qualified respondent is identified, request a price proposal. As necessary, negotiate a fair and reasonable price with that provider. Negotiate of price of engineering/architectural/surveyor services must take place after selection is completed; proposed cost may not be a selection criteria or consideration. Proposed costs should not be disclosed by TOWN OF FULTON to such bidders until most qualified bidder has been chosen.

If negotiations with the most highly qualified respondent are unsuccessful, formally end negotiations with that provider. Select the next most highly qualified provider and attempt to negotiate a fair and reasonable price. Repeat this process to select and negotiate with providers until a fair and reasonable priced contract can be awarded.

STEP 9: Clear the Respondent for Federal Requirements

Check the service provider's status in the System for Award Management (SAM) prior to any formal action authorizing the award of a contract to verify the provider is eligible to participate in the contract if awarded (not suspended or debarred) (www.SAM.gov). Service providers include Councils of Government..

STEP 10: Approve the Selected Respondent and Award Contract

Prepare contract for execution by all parties.

Present selection to TOWN OF FULTON Commissioner's Court.

TOWN OF FULTON Commissioner's Court approves selection of firm/individual by majority vote.

- TOWN OF FULTON Commissioner's Court has the final authority to award contracts but may select another Respondent if the minutes of the local governing body meeting include justification for the selection.

TOWN OF FULTON Commissioner's Court approves and executes contract. An affirmative majority vote is required.

STEP 11: Submit Financial Interest Report (A503) within 30 days

Submit the Financial Interest Report (Form A503) to TDA within 30 days of executing the services contract or within 30 days of grant award, whichever occurs last. This requirement applies to all subcontractors as well.

2.3 Contract Provisions

A copy of the service provider contract or agreement must be submitted to the federal/state agency, which must include the following at a minimum:

- Names of Both Parties

- Effective Dates - Starting and ending dates.
- Scope of Services - Either directly written into the contract or provided as an attachment that is incorporated into the contract.
- Compensation - Including the maximum amount of the contract as either a firm, fixed-price contract, or a not to exceed cost-reimbursable type contract.
- Program Liaison - the consultant's primary contact.
- Amendments - Procedures for amending the scope of work and/or compensation section.
- Termination - Explaining circumstances under which either party can cancel the contract.
- Resolution of Program Non-compliance – Procedures for determining the party responsible for any disallowed costs as a result of non-compliance with federal, state, or program requirements.
- Access to records – Provides government entity with access to any documents pertinent to the award. (formerly 24 CFR 85.36 (i)(10))
- Retention of records for three years - retain all required records for three years after the RAC/City/County makes its final payment and all pending matters are closed. (formerly 24 CFR 85.36(i)(11))
- On-site inspections - ensure that the complete work conforms with the approved plans and specifications (Engineering contract only).
- Debarment and Suspension (Executive orders 12549 and 12689) – A contract award must not be made to parties listed on the government wide exclusions list in the System for Award Management (SAM).
- For contracts greater than \$10,000, provisions for termination by the RAC, including the manner by which termination shall be effected and the basis for settlement.
 - All contracts will contain language which allows TOWN OF FULTON 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 TOWN OF FULTON (on request) or any other documented matter which could cause a hardship for TOWN OF FULTON if a claim should arise or the work not be completed on schedule at the specified cost.
 - All contracts will contain a termination for convenience provision, which allows TOWN OF FULTON 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.
- All contracts 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.
- For those contracts associated with construction including administration and/or engineering (see also below under construction), the inclusion of the equal opportunity clause provided under 41 CFR 60-1.4(b).

Any changes to the Administration/Professional Services contract price must be documented in the files through a contract addendum.

III - Micro-Purchases – Simplified Acquisition Purchases for Purchase Below Micro-Purchase Threshold (\$3,000 periodically adjusted for inflation)

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase). To the extent practicable, TOWN OF FULTON will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if TOWN OF FULTON considers the price to be reasonable and local laws and policies do not prohibit this method of procurement. TOWN OF FULTON must still verify the

contractor/service provider is not debarred or suspended under the System for Award Management (www.SAM.gov). Procurements may not be disaggregated for the purpose of falling below the Micro-Purchase threshold.

IV - Construction Services & Materials Contracts

Construction services and materials contracts paid in whole or in part with federal/state funds must be procured using either the **Small Purchase** procurement method or the **Sealed Bids** procurement method.

Environmental clearance must be completed before TOWN OF FULTON executes any construction contract or a materials contract.

4.1 Small Purchases – Purchase Below Simplified Acquisition Threshold (\$50,000 – periodically adjusted for inflation)

The Small Purchase procurement method uses relatively simple and informal procurement methods to secure equipment, non-professional/non-administrative services, supplies or other property that cost, in the aggregate, greater than \$2,000 and less than or equal to \$50,000 in accordance with state law (Simplified Acquisition Threshold).

For service contracts that are under the small purchase threshold and do not fall under professional services as defined in Section 2254.002(2) of the Local Government Code, TOWN OF FULTON may receive quotes and award the contract to any reasonable and responsible bidder.

Key concepts for Small Purchase procurement include:

- Aggregate cost – total cost of the project/job including federal/state funds and all other funding sources;
- Job – a project as defined by the engineering plans and specs;
- Separate purchases – purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase;
- Sequential purchases – purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase;
- Component purchases – purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

The Local Government Code, Sec. 262.023 (c) and Sec. 252.021 specifically prohibit the use of the small purchase procurement method to make separate, sequential, or component purchases of items or services, with the intent of avoiding the competitive bidding and competitive proposal requirements.

Prior to beginning small purchase procedures, TOWN OF FULTON should get an estimate of the cost of the construction from the engineer. If the estimated cost is greater than \$50,000, small purchase procurement would not be considered appropriate and is not an allowable cost.

Step by Step Small Purchase Procedures -TOWN OF FULTON will follow these steps;

Step 1: Comply with Davis-Bacon Act requirements.

Obtain prevailing wage rates for the local areas as required by the Davis-Bacon and Related Acts, and incorporate those wage rates into the procurement, if for construction (does not apply to construction contracts of \$2,000 or less.

Step 2: Contact a minimum of three vendors for quotes or estimates.

Contact at least three firms by phone, in person, in writing, or email to obtain cost estimates for goods or services. The responses (including responses that indicate no interest or quotes provided) must be recorded and filed.

Step 3: Promote participation of MBEs and Section 3 Businesses.

Take steps to encourage proposals from small, minority, and female-owned businesses and Section 3 business concerns as per the adopted HUB Policy.

Step 4: Clear the contractor.

Verify the contractor's eligibility through System for Award Management (www.SAM.gov) prior to award of or execution of contract. Print clearance for file.

Step 5: Award the Contract.

Award the contract to the lowest appropriate bidder. If the contract is awarded to a bidder that does not propose the lowest price, the decision must be documented in compliance with Texas LGC Section 252.043 or Section 262.027 as applicable.

Step 6: Execute the contract.**4.2 Sealed Bid Procurement – Cost Exceeds \$50,000**

Procurements of equipment, non-professional services, non-administrative services, materials and construction contracts whose total cost is **more than \$50,000** must formally advertise for sealed bids in a newspaper of general circulation and hold a public bid opening, unless an alternative procurement method (such as Construction Manager At Risk) is specifically authorized by the state/federal agency. Procurements by sealed bids are usually for construction and price is a major factor in awarding these contracts.

Sealed bids are publicly solicited and a firm, fixed-price contract (lump sum or unit price) is awarded to the responsible respondent whose bid, conforming with all the material terms/conditions of the invitation for bids, is lowest and best in price.

Step by Step Sealed Bid Procedures**STEP 1: Prepare Bid Package.**

TOWN OF FULTON must prepare a bid package detailing the specific goods or services to be provided by the contractor. This package should provide sufficient technical information for potential bidders to submit a competitive bid.

Bid packages must include a requirement that any contractor 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.

STEP 2: Comply with Davis-Bacon Act requirements

TOWN OF FULTON must obtain prevailing wage rates for the local area as required by the Davis- Bacon and Related Acts and incorporate those wage rates into the construction procurement.

STEP 3: Advertise for Bids

The procedure for advertising for bids is as follows:

- Publish the Invitation for Bid (IFB) in the local newspaper, on TOWN OF FULTON website, and such other places as TOWN OF FULTON deems appropriate.
- AC may also solicit sealed bids from responsible prospective suppliers/service providers by sending them a copy of such notice by mail or email.
- Ensure that the publication date is at least fourteen (14) days prior to the bid opening date;
- Describe work or item to be purchased or state where bid forms and specifications can be obtained;
- Include time and place for receiving and opening bids (count fifteen (15) calendar days, not including the print date);
- Include name and position of local official or employee to whom bids are sent;
- Indicate whether bidder should use lump-sum or unit pricing;
- Indicate method of payment;
- Indicate type(s) of bond(s) required by the bidder;

If an addendum to the bid package is necessary, it must be communicated to each potential bidder by email and

notice on the website. The distribution of an addendum shall be documented. The addendum will allow adequate time for consideration in bid preparation (usually at least one week). If adequate time is not available, the bid opening date will be extended.

The Dodge Report, *Texas Contractor*, the Minority Business Development Center, and regional newspapers are resources for advertising bids.

Retain a tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit for proof of advertising for monitoring purposes.

RAC may cancel an Invitation for Bid or reject all bids if it is determined that such is in the best interests of RAC. Bidders will be notified in writing of such cancellation or rejection. TOWN OF FULTON 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.

STEP 4: Promote Participation of MBEs and Section 3 Business concerns.

The Grant Recipient should actively take steps to encourage proposals from small, minority, female-owned businesses (MBEs), and Labor Surplus Area businesses as per the adopted HUB Policy.

STEP 5: Hold the Bid Opening

- Note the date and time of receipt of each bid on the bid envelope, which must be kept with the original bid even following the bid opening;
- Sealed bids will be opened in public at the time and place stated in the IFB. Open and read aloud each bid;
- Electronic Bids – The Local Government Code permits counties and municipalities to accept bids through electronic transmission as long as the local governing body has adopted written rules and procedures to ensure the identification, security, and confidentiality of electronic bids. *The procedures must ensure that the electronic bids remain effectively unopened until the proper time to unseal bids.* The Grant Recipient must maintain in its project procurement records copies of the written rules/procedures, local governing body minutes verifying adoption of the rules/procedures, documentation of any application software used to accept and administer the electronic bids, and any other documentation deemed necessary to verify compliance with statutory or programmatic requirements.
- The bids will be tabulated at the time of bid opening. Record the base bid, along with any alternates, on a bid spreadsheet. The tabulation and the bid procurements will be examined for accuracy and completeness.
- Announce the apparent low bidder and all bidders with complete packets.
- Determine whether firms are responsive and responsible.
- TOWN OF FULTON or its designee (usually the engineer) should carefully review the bids submitted and the low bidder's statement of qualifications and references. Awarding the contract on the same date as the bid opening does not generally allow sufficient time to research and review the documents and ensure that the low bidder has provided all the required forms, bonds, certifications, as well as qualifications and references. Determine whether firms are responsive and responsible.
- 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.
- Announce the apparent low bidder and all bidders with complete packets.

Note: **Municipalities** are required by state law to award the contract to the lowest responsible bidder based on best value considerations to the municipality. The municipality may reject any and all bids. (Texas Local Government Code Section 252.043(f))

Note: **Counties** are required by state law to award the contract to the responsible bidder who submits the lowest and best bid or must reject all bids and publish a new notice. (Texas Local Government Code, Section 262.027(a))

Overbids

If the bids received exceed the designated budget, the Grant Recipient has the following options:

- Reject all bids and re-bid the project;
- Accept the deductive alternates in the bid packet (if applicable);
- Delete bid items or quantities before contract award, if all bidders agree in writing to changes;
- Accept the low bid and provide additional RAC/local funds.

If all bids received exceed the amount of the construction budget, **THE GRANT RECIPIENT MAY NOT NEGOTIATE THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER.** To allow one bidder to negotiate the contract price is not fair to the other contractors who submit bids. **COSTS.**

Recordkeeping for the Bid Opening

Minutes of the bid opening, along with a tabulation of the bids, must be placed in the contract file. After contract award, the opened bids must be kept on file and available for inspection by anyone desiring to see them. However, any trade secrets and/or confidential information in the proposals are subject to the restrictions of Section 252.049(b) of the Texas Local Government Code and Chapter 552 of the Texas Government Code.

STEP 6: Clear the Contractor

TOWN OF FULTON must verify the construction contractor's eligibility through the System for Award Management. Eligibility of all contractors must be verified through the SAM website prior to any formal action authorizing the award of the contract.

STEP 7: Award the Contract

TOWN OF FULTON must award the contract within the number of days indicated in the bid advertisement, if specified. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.

TOWN OF FULTON Commissioner's Court will make the decision as to whom the contract shall be awarded. Any or all bids may be rejected if there is a sound documented reason. A contract will be prepared, in a form acceptable to the relevant federal/state agency containing required federal law provisions, for execution by the successful bidder.

STEP 8 Execute the Contract

Third Party Procurement Services

A Grant Recipient may choose to purchase certain goods and services through a third party, such as the Texas Association of School Boards "Buy Board" or the Houston-Galveston Area Council "HGACBuy". All procurement requirements apply to purchases through these entities; however many steps may be conducted by the third party rather than the Grant Recipient. The Grant Recipient must retain a copy in the contract files of the cooperative agreement with the third party certifying the type of procurement process used. Third Party Procurement may only be secured through the City or County.

4.3 Required Contract Provisions

In addition to other Federal and State provisions required, all contracts must address, if applicable, the following provisions.

- Debarment and Suspension (Executive orders 12549 and 12689) – A contract award must not be made to parties listed on the government wide exclusions list in the System for Award Management (SAM).
- For contracts greater than \$10,000, provisions for termination by the RAC, including the manner by which termination shall be effected and the basis for settlement.
- All contracts will contain language which allows TOWN OF FULTON 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 TOWN OF FULTON (on request) or any other documented matter which could cause a hardship for TOWN OF FULTON if a claim should arise or the work not be completed on schedule at the specified cost.

- All contracts will contain a termination for convenience provision, which allows TOWN OF FULTON 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.
- 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.
- Access to Records (formerly 24 CFR 85.36 (i)(10))
- Retainage of Records (formerly 24 CFR 85.36(i)(11))
- For contracts greater than **\$50,000**, provisions for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- For those contracts associated with construction including administration and/or engineering (see also below under construction), the inclusion of the equal opportunity clause provided under 41 CFR 60-1.4(b).
- A Boycott Israel Check will be performed prior to award of a contract based upon the Divestment Lists maintained by the Texas Safekeeping Trust Company and posted to the CPA website located at Comptroller.Texas.Gov. If the potential awardee is on the list, the contract may not be awarded to that vendor for goods or services. *86th Legislative Session of Texas House Bill (HB) 793.*
- An Iran, Sudan, & Foreign Terrorist Organization Check will be performed prior to award of a contract based upon the Divestment Lists maintained by the Texas Safekeeping Trust Company and posted to the CPA website located a Comptroller.Texas.Gov. If the business is in violation, the contract may not be awarded to that vendor. *Tex. Gov't. Code 2252.001(2) and Tex. Gov't. Code 2252.152.*

In addition to the preceding, Construction Contracts must also address the following:

- For construction contracts greater than \$2,000, compliance with the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) as supplemented by Department of Labor regulations (29 CFR part 5)(satisfied by inserting HUD 4010 in construction contract.
- For construction contracts greater than \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3) (satisfied by inserting HUD 4010 in construction contract.
- *For construction contracts greater than \$10,000 including administration and/or engineering contracts associated with such construction, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b).
- For construction contracts greater than or equal to \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S. C. 1352) (satisfied by certification regarding lobbying signed by contractor bidder and by inclusion of language in construction contract)
- For construction contracts greater than \$100,000, compliance with Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers (satisfied by inserting HUD 4010 in construction contract.
- Where federal funding exceeds \$200,000 and the contract or subcontract exceeds \$100,000, include Section 3 clause. (24 CFR § 135.38 and 24 CFR § 135.3)
- For contracts greater than \$150,000, the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

4.4 Workers' Compensation Requirements

Texas Labor Code §406.096 requires a governmental entity that enters into a building or construction contract to obtain written certification that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. Subcontractors must also provide the governmental entity with proof of coverage. Additionally, the governmental entity must include in bid specifications and contracts specific language and provisions found in 28 TAC §110.110(c)(7). Grant Recipients are responsible for compliance with all applicable statutory policies. The Texas Department of Insurance – Division of Workers' Compensation regulates and enforces workers' compensation requirements and may be contacted at 800-372-7713 for more information.

4.5 Bonding Information

Pursuant to Government Code Chapter 2253, for construction or facility improvement contracts or subcontracts, the minimum bonding requirements includes a bid guarantee, a performance bond, and a payment bond (if applicable) are as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price for contracts that is greater than \$100,000. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified cashier's check, U.S. Savings bond or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100 percent of the contract price for contracts that is greater than \$100,000. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- The only forms of surety acceptable as a performance bond are: Cashier's Check, Certified Check, United States Treasury Bond, Certificate of Deposit, Irrevocable Letter of Credit issued by a financial institution subject to the laws of Texas, or Surety or Blanket Bond from a company chartered or authorized to do business in Texas.
- 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/or material in the execution of the work provided for in the contract. Required payment bond(s) must be filed within 30 days from the date of the Notice of Award.
 - Municipalities: If the contract is in excess of \$50,000, a payment bond is required. Government Code 2253.021(a)(2)(B)
 - Counties: If the contract is in excess of \$25,000, a payment bond is required. Government Code 2253.021 (a)(2)(A)

If TOWN OF FULTON has adopted an existing bonding policy and requirements that differs from that described above, TOWN OF FULTON may submit to the federal/state agency documentation of the existing bonding policy and requirements with a written request that the agency approve in writing the allowance of utilizing the existing bonding policy and requirements.

4.6 Changes to an Executed Construction Contract

When changes to an executed construction or materials contract are necessary due to decrease or increase in the **quantity of work to be performed or of materials, equipment or supplies to be furnished**, TOWN OF FULTON will submit the change to the federal/state for approval. Upon approval by the agency of the Change Order, TOWN OF FULTON then obtains the signature of the construction contractor.

- If a Change Order involves a decrease or an increase of \$50,000 or less, the Grant Recipient must receive appropriate approval by TOWN OF FULTON Commissioner’s Court.
- Counties:
 - The original contract may not be increased by more than 25% unless required by state or federal law, rule or regulation after the contract is made. (Tex. Local Gov’t Code 262.031(b)).
 - Grant Recipient must provide written justification, including citation to the appropriate source, for review.
 - Decreases to the original contract of more than 18% must have the contractor’s written consent. (Tex. Local Gov’t Code 262.031(b)).

NOTE: Change orders for an increase of more than 25% will be rejected. TOWN OF FULTON must rebid project in the event of an increase of more than 25%. The State of Texas considers a change in the construction contract price of greater than 25% to be non-competitive, as other potential bidders did not have the opportunity to bid on the true scope of the project during the procurement process.

V - Non-Competitive Proposal Procurement

Non-competitive proposal procurement (often referred to as “sole source”) may be used when the award of a contract is not feasible under small purchase, sealed bid or competitive proposal procedures. This may be due to single source availability or inadequate competition, determined after solicitation of a number of sources. Non-competitive proposal procurement is most often used for emergency situations and disaster projects.

RAC will consider the use of non-competitive proposal procurement under the following situations (See 2 CFR 200.320(f)):

- Single Source: this method allows procurement through solicitation of a proposal from only one source when the item or service is only available from a single source;
 - **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.
 - **Compatibility** – the commodity or service must match an existing brand of equipment for compatibility and is available from only one vendor.
 - **Replacement Part** – the commodity is a replacement part for a specific brand of existing equipment and is available from only one supplier.
 - **Delivery Date** – only one supplier can meet necessary delivery requirements.
- Public urgency/emergency situations: State laws generally allow noncompetitive negotiations in such cases where the urgency for carrying out the project will not permit delays caused by competitive advertising/solicitation.
 - After solicitation of a number of sources, competition is determined inadequate. The condition of bids being over budget alone does not create a qualifying condition (inadequate competition) or justification for non-competitive procurement.

Procurement by noncompetitive negotiation requires the strictest attention to the observation of impartiality toward all suppliers. ~~Aransas County~~TOWN OF FULTON must approve all procurements by non-competitive negotiation.

~~Aransas County~~TOWN OF FULTON will verify the contractor’s eligibility through the System for Award Management (www.SAM.gov). Eligibility of all contractors must be verified through the SAM website prior to any formal action authorizing the award of the contract to the contractor.

VI - Recordkeeping Procedures

TOWN OF FULTON must maintain records that are detailed enough to show the history of each procurement and that the selection process was carried out in an open, fair, uniform, and thorough manner. At a minimum, records must demonstrate the RAC:

- Executed price sampling for small purchases, or established [published] RFP solicitation;
- Selected method of procurement and the type of contract to be used;
- Solicitation/response; HUB compliance
- Evaluation and selection criteria;
- Determined the bids or proposals to accept and the ones to reject/contractor selection or rejection; and
- Computed the basis for the contract cost or price.

6.1 Micro-purchases

TOWN OF FULTON must maintain copies of all purchase orders and, if possible, show evidence of distributing purchases equitably among suppliers.

6.2 Competitive Proposal - Professional Services/Administration Services

The files for professional services or administration services procurement should contain the following information:

- Proof of advertisement (tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit)
- Proof that 5 or more Firms/Individuals were contacted for proposals
- A complete RFP packet
- Proof that all proposals were received by the RAC, with note or stamped date/time received
- Verification that the Firm and Principals of Firm are not on the SAM.gov debarred or suspended list (printout of SAM.gov page with date)
- Meeting Minutes documenting the award
- An Executed Contract

6.3 Construction & Material Purchases

TOWN OF FULTON must establish and maintain separate files for records relating to the procurement of a construction contractor or materials supplier to detail the procurement process undertaken. The files should contain:

- Bid Document(s)
- Contract Document(s)
- Actual Advertisements for Bids (either full page or with publisher's affidavits) or evidence of quotes/ estimates received (for small purchase procurement);
- Bids Received (or quotes received);
- Verification that the Firm and Principals of Firm are not on the SAM.gov debarred or suspended list (printout of SAM.gov page with date)
- If contract > \$100,000, signed Certificate Regarding Lobbying
- Bid Tabulation Sheet(s) (if applicable);and
- A copy of TOWN OF FULTON commissioner court action awarding the contract

VII - Federal & State Laws Governing Procurement of Services, Supplies and Non-Real Property

The laws and regulations described in this section apply to the procurement of services, supplies or non-real property in federal/state-funded projects.

7.1 State Laws & Regulations

Note: The full text of state statutes may be found online at: <http://www.legis.state.tx.us/>.

Texas Local Government Code - Chapter 252 (Municipalities) and Chapter 262 (Counties)

Chapter 252 Municipal Grant Recipients Construction Bidding Procedures

Municipal Grant Recipients are generally required to conduct competitive sealed bid procurement for any and all contracts over \$50,000.

Municipalities are required by state law to advertise their invitation for bids in a newspaper published in the municipality at least once a week for two consecutive weeks. The date of the first publication must be before the 14th day before the date set to publicly open the bids. If no newspaper is published in the municipality, the notice must be posted at city hall for fourteen days prior to the date of the bid opening. (Texas Local Government Code Section 252.041(a)).

Chapter 262 County Grant Recipients Construction Bidding Procedures

County Grant Recipients are generally required to conduct competitive sealed bid procurement for any and all contracts over \$50,000.

Counties are required by state law to publish a notice in a newspaper of general circulation in the county at least once a week for two consecutive weeks, with the first day of publication occurring at least fourteen days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for fourteen days prior to the date of the bid opening. (Texas Local Government Code Section 262.025(a)).

- **Texas Government Code -- Chapter 2253 Public Work Performance and Payment Bonds** Covers bonding requirements.
- **Texas Government Code, Chapter 2254.** This chapter is also known as the Professional Service Procurement Act. Chapter 2254 governs the local government procurement of professional services. It prohibits the procurement of architects, engineers, or surveyors based on bid price and requires government entities to first select the most highly qualified provider based on demonstrated competence and qualifications, and then attempt to negotiate with that provider a contract at a fair and reasonable price.
- **Texas Local Government Code, Chapter 171.** This chapter requires local government officials to disclose conflicts of interest and sets forth rules that require officials to abstain where they are in a position to vote or make a decision on any matter involving a business entity or real property for which they have an interest in.
- **Texas Engineering Practice Act, Chapter 1001,** Texas Occupations Code. This Act states that a registered professional engineer must be hired to prepare plans, specifications, and estimates for any public works activities in accordance with this Act. The engineer must directly supervise the project in order to ensure the public health, safety, and welfare; however, this Act does not apply to road maintenance or betterment work undertaken by Counties.
- **Procurement Standards** (Uniform Grant Management Standards (UGMS) - Texas Comptroller of Public Accounts
- **Conflict of Interest** - Nepotism and conflict of interest regulations can be found in the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, and UGMS.

7.2 Federal Laws & Regulations

- 24 CFR 570
- Portions of 2 CFR 200, Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards, as further specified by program regulations in 24 CFR Part 570 HUD Conflict of Interest regulations at 24 CFR 570.489(g) and (h)

VIII - Contract Administration

TOWN OF FULTON will maintain oversight of contractors to ensure they perform in accordance with the terms, conditions, and specifications of their contractors or purchase orders.