CITY OF LINCOLNTON
ADMINISTRATIVE POLICY

Subject: **Uniform Guidance Procurement Policy**	**Manual:** **Administrative**
Policy Number:	**Effective Date:**
Issued By: **Pamela McBryde, Finance Director**	**City Manager Approval:** **Ritchie Haynes, City Manager**

A copy of this policy must be maintained in the City of Lincolnton's Administrative Manual for each City department and division.

I. Purpose

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract. To the extent that other sections of procurement policies and procedures adopted by the City of Lincolnton are more restrictive than those contained in this policy, local policies and procedures shall be followed.

II. Policy

A. **Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). The requirements of this Policy also apply to any subrecipient of the funds.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

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

C. **Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.

D. **No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.

E. **Contract Requirements.** All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

F. **Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.

G. **Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

III. General Procurement Standards and Procedures:

Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

A. Necessity. Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

B. Clear Specifications. All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

C. Notice of Federal Funding. All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

D. **Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.

E. **Fixed Price.** Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.

F. **Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.

G. **Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.

H. **Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

I. **Documentation.** Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.

J. **Cost Estimate.** For all procurements costing $250,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by

which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.

K. **Contract Requirements.** The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II.C of this Policy.

L. **Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder's list.

M. **Contractor Oversight.** The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.

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

O. **Geographic Preference.** No contract shall be awarded on the basis of a geographic preference.

IV. Specific Procurement Procedures

Either the Purchasing Department or the Requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

A. **Service Contracts** (except for Architectural/Engineering professional services) and **Purchase Contracts costing less than $10,000** shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:
   1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
   2. To the extent practicable, purchases must be distributed among qualified suppliers.

B. **Service Contracts** (except for Architectural/Engineering professional services) and **Purchase Contracts costing $10,000 up to $90,000** shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:
   1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).

2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids.
4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
5. Award the contract to the lowest responsive, responsible bidder.

C. **Service Contracts** (except for Architectural/Engineering professional services) and **Purchase Contracts costing $90,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:
   1. Cost or price analysis is required prior to soliciting bids.
   2. Complete specifications or purchase description must be made available to all bidders.
   3. The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
   4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
   5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
   6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for "sound documented reasons."

D. **Service Contracts** (except for Architectural/Engineering professional services) **costing $250,000 and above** may be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)) when the "sealed bid" procedure is not appropriate for the particular type of service being sought. The procedures are as follows:
   1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an "adequate number" of qualified firms.
   2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
   3. Identify evaluation criteria and relative importance of each criterion (criteria weight) in the RFP.

4. Consider all responses to the publicized RFP to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award the contract to the responsible firm with the most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
7. Award the contract on a fixed-price or cost-reimbursement basis.

E. Construction and repair contracts costing less than $10,000 shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:

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

F. Construction and repair contracts costing $10,000 up to $250,000 shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
4. Award the contract on a fixed-price or not-to-exceed basis.
5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.

G. Construction and repair contracts costing $250,000 up to $500,000 shall be procured using the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of the opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.

5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price are required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for "sound documented reasons."

H. **Construction and repair contracts costing $500,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:
   1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
   2. Complete specifications must be made available to all bidders.
   3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
   4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
   5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
   6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price are required of the winning bidder.
   7. Award the contract on a firm fixed-price basis.
   8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for "sound documented reasons."

I. **Construction or repair contracts involving a building costing $300,000 and above** must comply with the following additional requirements under state law:
   1. Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
   2. Separate specifications shall be drawn up for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).

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

J. **Contracts for Architectural and Engineering Services costing under $250,000** shall be procured using the state "Mini-Brooks Act" requirements (G.S. 143-64.31) as follows:
   1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
   2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
   3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
   4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
   5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
   6. Award the contract to the best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

K. **Contracts for Architectural and Engineering Services costing $250,000 or more** shall be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)(5)) as follows:
   1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
   2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
   3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
   4. Proposals must be solicited from an "adequate number of qualified sources" (an individual federal grantor agency may issue guidance interpreting "adequate number").
   5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
   6. Consider all responses to the publicized RFQ to the maximum extent practical.
   7. Evaluate the qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
   8. Price cannot be a factor in the initial selection of the most qualified firm.

9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
10. Award the contract to the best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

V. Exceptions

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

A. Sole Source. A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.

B. Public Exigency. A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.

C. Inadequate Competition. A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.

D. Federal Contract. A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

E. Awarding Agency Approval. A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.