



THE CITY OF  
**DAVENPORT**  
I O W A | U S A

## **PURCHASING POLICY**

**DEPARTMENT OF FINANCE  
DIVISION OF PURCHASING**

**February 09, 2024**

## **PURCHASING POLICY**

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## **SECTION 1 – General Provisions**

### **1:101 Purposes**

1. Interpretation. This policy shall analyze and be applied to promote its underlying purposes and policies. Should any discrepancies be found to exist between this policy and Iowa State Code or City ordinance (Article 2.12), the code or ordinance shall take precedence.
2. Purposes and Policies. The underlying purposes and procedures of this policy are:
  - A. To simplify, clarify, and interpret the ordinance governing the purchasing of supplies, services and capital equipment by the City of Davenport.
  - B. To permit the continued development of procurement policies and practices.
  - C. To provide for increased public confidence in the procedures followed by the City's public procurements.
  - D. To ensure the fair and equitable treatment of all firms and individuals who deal with the purchasing system.
  - E. To provide increased economy in City purchasing activities and to maximize the fullest purchasing value of public funds.
  - F. To foster effective broad-based competition within the free enterprise system.
3. Singular, Plural and Gender Rules. In this policy, unless the context requires otherwise:
  - A. Words in the singular number include the plural, and those in the plural include the singular.
  - B. Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.
4. User Department Responsibilities. Although the City of Davenport's purchasing function is highly decentralized, all departments are required by ordinance to use the services of the Purchasing Division and are responsible for an important part of the process. Departmental responsibilities are listed below for guidance.
  - A. Determine the quality and quantity of supplies, materials and equipment needed, and the delivery date required.
  - B. Anticipate and requisition requirements giving accurate description of article(s) required in sufficient time for purchasing items on a competitive basis when required.
  - C. Receive and inspect item(s) delivered direct by vendor and refuse shipments that fail to meet purchase order contract.
  - D. Handle all emergency purchases and declarations of surplus property, in accordance with established procedures ensuring appropriate approvals are obtained.
  - E. Cooperate with Purchasing Division in establishing standard specifications for supplies, materials, and equipment.
5. Availability of Public Purchasing Records. Purchase orders, invitations to bid, summary of bids, and other purchasing information of a public nature shall be available for inspection upon verbal or written request to the Purchasing Manager or designee during normal working hours in the Purchasing Division.

Notices of formal invitations to bid or requests for proposals shall be posted on the City of Davenport's e-bidding system and on the City website ([www.davenportiowa.com](http://www.davenportiowa.com)).

Bid results shall be posted on the City of Davenport's e-bidding system and are accessible through the City's website.

Every courtesy shall be extended to vendors seeking information or assistance relating to the City's purchasing needs.

All information relative to bids or contracts will be made available to vendors upon request except request for proposal information while under review or negotiations.

#### 6. Definitions in Policy

Administrator:	City Administrator or designee
Bidder:	Any firm, individual, corporation, agent, or company who may desire to offer a quote for supplies being purchased by the City of Davenport or who wants to purchase supplies offered for sale by the City of Davenport
City:	City of Davenport, County of Scott, State of Iowa
Council:	Council of the City of Davenport
Finance Director:	Director of Finance or designee; shall also mean Chief Financial Officer (CFO)
Manager:	Purchasing Division Manager or designee
Policy:	Shall mean wholly, or any part thereof, of the Purchasing Policy
Mayor:	The Mayor of the City of Davenport
Ordinance:	Shall mean ordinance Article 2.12 of the City Code of Davenport
Purchasing:	Purchasing Division
Shall or Duty:	Means mandatory
Supplies:	Any material, equipment, property, or services of value to be purchased or sold by the City of Davenport

#### 7. Purchasing Documents

Requisition	Invitation to Bid	Contract
Request for Proposal	Purchase Order	DBE Subcontractor Forms
Sealed Procurement Request Form	Statement of Intent and Non-Collusion Affidavit	General Contractor Quality Assurance Questionnaire
Request for Qualifications	Bidder Status Form	Specifications/Plans
Budget/CIP Budget	Instructions to Bidders	Terms and Conditions
General Contract Conditions	Council Action Document	Bid Tabulation

8. Records to be maintained. The following is a list of records and forms that shall be maintained on a current basis by Purchasing for a period of years in accordance with State, County, City, and other appropriate laws.

Procurement information shall be a public record to the extent provided by State statute and City ordinance.

1. Bidders Lists
2. Commodity Codes
3. Emergency Purchase Records
4. Sole Source Purchase Records
5. General Correspondence
6. Invitations to Bid/Requests for Proposals documents and results of all such solicitations as required by ordinance or policy
7. Purchase Orders
8. Vendor Registrations
9. Bid Saving Records
10. Other records as deemed necessary for maintenance of information as required by ordinance or policy

These current files shall be readily available to the individual access of the City Administrator or designee.

### **1:102 Supplementary General Principles of Law Applicable**

Unless displaced by Article 2.12 of the City ordinance, the principles of law and equity, including the uniform commercial code of the State of Iowa, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provision of City ordinance and this policy.

### **1:103 Requirement of Good Faith**

This policy requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

### **1:104 Application of this Policy**

General Application. This policy shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies except as otherwise stated in Section 11.301 (Compliance with Federal Requirements) by this City. This policy shall not apply to either grants or contracts between other governments except as stated in Section 10 (Intergovernmental Relations). This policy shall also apply to the disposal of all City surpluses. Nothing in this policy shall prevent any City agency from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

### **1:201 Documentation**

Written documentation required by Article 2.12 of City ordinance or as required by this policy shall be retained by the Purchasing Division.

### **1:301 Additional Definitions**

The words defined in this section shall have the meanings set forth below whenever they appear in this policy unless:

- ✓ The context in which they are used clearly requires a different meaning; or
- ✓ A different definition is prescribed for a particular section or provision.

**‘Business’** means any corporation, partnership, individual, sole proprietorship, Joint Stock Company, joint venture or any other private legal enterprise.

**‘Capital Equipment’** shall mean those items that are non-recurring purchases costing more than \$5,000 that have a projected life span of over one year. They must be recorded as an asset of the department and added to the fixed asset inventory and reported to the City’s insurance carrier.

**‘Change Order’** means a written order directing a contractor to make changes under that clause of the contract, which allows the City to order changes without consent of the contractor. Such a change order requires the written approval of the City Administrator or designee if the amount of the order is under \$50,000. Change orders in excess of \$50,000 must be approved by City Council.

**‘Construction’** means the process of building, altering, renovating, improving or demolishing any public structure or building or other improvements of any kind to any public real property.

**‘Contract’** means any type of City agreement, regardless of its identification, for the procurement or disposal of supplies, services or construction. The term ‘contract’ when used in this policy shall not include employment agreements or collective bargaining agreements.

**‘Contract Modification’** means any written alteration approved by the City Administrator or designee, in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

**‘Contractor’** means any person having a contract with the City of Davenport.

**‘Date’** means recorded information regardless of form or characteristic.

**‘Designee’** means a duly authorized representative of a person holding a superior position.

**‘Director’** means the person holding the position created in Article 2.12 of City ordinance creating the Purchasing Division under the Department of Finance.

**‘Employee’** means an individual drawing a salary from the City of Davenport whether elected or not and any non-compensated individual performing personal services for the City.

**‘Government Body’** means any department, commission, council, board, bureau, committee or agency of the City of Davenport.

**‘Grant’** means assistance furnished by the City, whether financial or otherwise, to any person to support a program authorized by the City Council. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a Grant, but a procurement contract.



***‘May’*** denotes the permissive.

***‘Person’*** means any business, individual, union, committee, club, other organization, or group of individuals.

***‘Procurement’*** means buying, purchasing, renting, leasing, or otherwise acquiring any equipment, product or service.

***‘Purchasing Division’*** means the division of the Finance Department of the City of Davenport, which is authorized by Code and this Policy to enter into contracts.

***‘Purchasing Manager’*** means the person duly authorized to enter into and administer contracts and make written determinations to the Finance Director respectively. The term also includes an authorized designee acting within the limits of authority.

***‘Regulation’*** means the City Council, City Administrator or Finance Director’s statement having general or particular applicability and future effect designed to implement, interpret, or prescribe procedure, which has been promulgated in accordance with Article 2.12 or this policy.

***‘Services’*** means the furnishing of labor, time, or effort by a contractor (not involving the delivery of a specific end product other than reports which are merely incidental to the required performance).

***‘Shall’*** denotes the imperative.

***‘Supplies’*** means all consumable items including printing that has a normal usable life of less than one year.

***‘Using Agency’*** means any department, board or commission of the City Council, which utilizes any supplies, capital equipment, services or construction procured under Article 2.12 of the City Municipal Code or this policy.

## **SECTION 2 – Procurement Organization**

### **2:101 Authority of the Purchasing Division**

The Purchasing Division has been created as a division of the Finance Department by ordinance 80-1008 Article 2.12 of the municipal code of the City of Davenport and shall be guided and regulated by said ordinance and the procedures of this policy. The relevant code sections can be found in Appendix C.

### **2:201 Authority to Contract for Certain Services**

General Authority. For the purpose of procuring the services of accountants, clergy, physicians, lawyers, and dentists as defined by the ordinance of the City of Davenport, any agency of this City may act as a purchasing agent and contract on its own behalf for such services subject to approval of the City Administrator or designee and applicable laws and ordinances. The City agency shall consult with the Purchasing Manager when procuring such services.

All procurement for legal services shall be approved by the Corporation Counsel, and the Legal

Department may contract on its own behalf for such services.

**2:202 Exceptions.** Unless otherwise ordered by the City Administrator or designee, the following supplies, services, and construction need not be procured through the Purchasing Division, but shall nevertheless be procured by the appropriate agency subject to all applicable Federal, State, and City statutes:

- A. Library procurements including published books, maps, periodicals, and technical pamphlets.
- B. Architect-Engineer and land surveying services as defined in Section 5:101.
- C. Works of art for museum or public display.

See section 2.12.130 of ordinance for contracts that are exempt from competitive bidding.

### **2:301 Collection of Data Concerning Public Procurement**

The Purchasing Manager, in concurrence with the Finance Director, shall prepare statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be approved by the City Council, as necessary to accomplish this function. All using agencies shall furnish such reports as the Purchasing Manager may require concerning usage, needs and stocks on hand. The Purchasing Manager shall have the authority to prescribe forms to be used by the using agencies in requisitioning, ordering and reporting of equipment, supplies, services and construction.

### **2:401 Purchase Requisitions and Approvals**

Every purchase shall originate through a purchase requisition and is subject to the system approval process. Exception: Emergency purchases, Section 3:208 (Emergency Purchases).

Individual purchases shall be subject to the following dollar amount approval:

- 1. Purchases *up to \$5,000* shall require the approval of the Director of the requesting agency or designee;
- 2. Purchases *in excess of \$5,000 but not exceeding \$25,000* require the approval of the Finance Director or designee;
- 3. Purchases *in excess of \$25,000 but not exceeding \$50,000* require the approval of the City Administrator or designee;
- 4. Purchases *exceeding \$50,000* in value require city council approval.

Requests for regular purchases will not be considered unless submitted as standard purchase requisitions.

The following information must be included in the purchase requisition:

- 1. Date, department, address, phone number of person making requisition, and approval signature(s).
- 2. Accounting fund coding.
- 3. Detailed description of goods or services requested.
- 4. Delivery point.

5. Special instructions for Purchasing shall be entered as “General Notes.”

The Purchasing Division and the Requisitioner shall work together to ensure competition in every possible case. Any dispute between Purchasing and the agency may be referred to higher authority regarding a difference of opinion in relation to specifications.

## **2:402 Processing of Purchasing Requisition**

Departments shall follow the appropriate method of purchase as established by the Purchasing Division to obtain the best possible competitive pricing.

The requisitioner shall determine which established method of purchasing (such as verbal quotes \$3,000 to \$10,000, written quotes from \$10,000 - \$50,000, over \$50,000 Invitation to Bid, Request for Proposal, RFQ, RFI, or emergency) shall be used. All requisitions received by Purchasing shall be reviewed by the Purchasing Manager or designee to ensure that it is complete and contains all necessary data. The Manager may hold requisitions that are inadequate and shall request additional information from originator to provide corrective action required.

## **2:501 Purchase Orders**

Definition: A written purchase order is an offer to purchase, an acceptance of an offer to sell, and/or a confirmation between two or more competent parties. **The purchase order is a legal document and upon acceptance by a vendor, becomes a contract.**

It is the duty of all Purchasing Division personnel involved in the preparation and issuance of purchase orders to exercise precision and clarifications in the contents of a purchase order. All legal questions initiated by Purchasing Division personnel for resolution by the legal staff shall be in writing over the signature of the Purchasing Manager with review by the Finance Director.

It is important to note that conditions appearing on purchase orders, as well as written and attached and so noted supplemental documents on the order, are part of the contract. Verbal instructions will be discouraged except in cases of emergency. All such verbal instructions must be confirmed in writing without delay. Verbal discussions shall not be binding.

Information required on a purchase order:

1. City's name and address
2. Purchase order number and General Ledger accounting code and encumbrance information
3. Requisition number
4. Bid number or method of purchase used
5. Agency for whom goods or services are required
6. Supplier's name and address
7. Individual's name to which order is directed, if applicable
8. Shipping instructions
9. Terms of payment and cash discounts
10. F.O.B. points
11. Quantity required
12. Unit and total pricing
13. Description of materials or services required

14. Invoicing instructions if different from printed terms and conditions
15. Authorized signature
16. Printed standard terms and conditions.
17. Copies of quotes obtained should be attached
18. Any additional information necessary to clarify intent of needs of the City of Davenport or to prevent possible misunderstandings

## **2:502 Division of Requirements**

Agencies and Purchasing shall not, in any case, divide requirements to evade the monetary limits imposed by law, ordinance, policy, or requirement of any other procurement agency.

## **2:503 Purchase Order – Distribution of Copies**

### **1. Distribution of Purchase Order Copies**

An electronic copy shall be retained by the Purchasing Division as a permanent file copy with backup documentation when required. If requested by the vendor, a copy of the Purchase Order, signed by the Purchasing Manager will be mailed or emailed to the vendor.

### **2. Records to be Maintained Following Purchase Order Distribution**

The Purchasing Division will maintain an electronic file of the Purchasing copies of all purchase orders issued in numerical order.

## **2:504 Advance Purchase Order**

Advance purchase order numbers shall not be issued except as outlined in this policy, covering emergency orders. Section 3:207 (Emergency Procurement), 3:208 (Emergency Purchases), 3:209 (Administrative Emergency).

## **2:601 Purchasing Card**

It is the policy of the City of Davenport to have a Purchasing Card (P-card) Program. This program is intended for online purchases, to order products online from vendors that will not accept a Purchase Order, for registration for conferences or classes, and airline or hotel reservations online. Specific processes and procedures have been set forth in the Purchasing Card Program Policy located in Appendix D.

## **2:701 Receiving Report**

When the vendor has delivered the merchandise, the receiving department should inspect the shipment for the following:

1. Shipment is complete
2. There is no apparent damage. Broken or damaged cartons should be opened and merchandise inspected before signing acceptance of delivery.

3. Merchandise must comply with specifications on the order.

When receiving department is satisfied and ensures that merchandise is acceptable, they should receive the items in the system and forward a copy of the invoice to Accounting for invoice review and payment. Receiving department shall be responsible for maintaining receiving report files.

### **SECTION 3 – Source Selection and Contract Formation**

#### **3:101 Definitions of Terms Used in this Section**

1. *'Cost-Reimbursement Contract'* means a contract under which a contractor or supplier is reimbursed for costs which are allowable and allocated in accordance with the contract terms and the provisions of all laws and ordinances, and a fee, if any.
2. *'Established Catalogue Price'* means the price included in a catalog price list, schedule or other form that:
  - A. Is regularly maintained by a manufacturer or contractor.
  - B. Is either published or otherwise available for inspection by customers.
  - C. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
3. *'Invitation for Bids'* means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.
4. *'Purchase Description'* means the words used in a solicitation to describe the equipment, supplies, services or construction to be purchased and includes specifications attached to or made a part of the solicitation.
5. *'Request for Proposals'* means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed proposals.
6. *'Responsible Bidder'* or *'Offeror'* means a person or firm who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
7. *'Responsive Bidder'* means a person or firm who has submitted a bid (or proposal) which conforms in all material respects to the solicitation for bids or proposals.

#### **3:201 Methods of Source Selection**

Unless otherwise authorized or as provided in City ordinance, all City contracts shall be awarded by using one of the following methods:

- Informal Request for Quotes (3.202)
- Competitive Sealed Bidding (3.203)

Competitive Sealed Proposals (3.204)  
Competitive Sealed Quotations (3.205)  
Sole Source Procurement (3.206)  
Emergency Procurements (3.207)  
Emergency Purchases (3.208)  
Administrative Emergency (3.209)  
Competitive Selection Procedures for Services Specified in Section 2:201 'Authority to Contract for Certain Services' (3.210)  
Architect-Engineer and Land Survey Services (5.501)

### **3:202 Informal Request for Quotes**

1. ***Conditions for use.*** Contracts shall be awarded by a request for quotes when the procurement is valued at over \$3,000 but less than \$50,000 except as provided by ordinance. Verbal quotes are acceptable up to \$10,000, between \$10,000 and \$50,000 written quotes must be obtained.
2. ***Request Written for Quotes.*** A request for written quotes shall be issued by the requesting department or in coordination with the Purchasing Division. It will notify three or more vendors and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Quotes must be submitted in writing.
3. ***Acceptance and Evaluation of Quotes.*** Vendor quotes shall be submitted in writing and shall be unconditionally accepted without alteration or correction. Quotes shall be evaluated based on the requirements set forth in the request for quotes. Requirements may include inspection, demonstration, quality standards, workmanship, delivery and suitability for a particular purpose. Copies of all quotes received shall be maintained for inclusion in the purchase file.
4. ***Awards.*** The contract shall be awarded by written notice to the vendor that submits the low quote and whose quote meets the requirements and criteria set forth in the request for quotes. The purchase order will not be issued until copies of the quotes are received by the Purchasing Division. If the award is for a service or construction project, a written contract will be written by the Purchasing Division. All signatures must be obtained prior to issuing a purchase order. A sales tax exempt certificate will be issued for the purchase of materials being used.

### **3:203 Competitive Sealed Bidding**

1. ***Conditions for use.*** Contracts shall be awarded by competitive sealed bidding for procurements with a value exceeding \$50,000 except as otherwise provided in Section 3:201 or by ordinance.
2. ***Invitation for Bids.*** An invitation for bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.
3. ***Public Hearing.*** Public hearing processes set forth and as amended in the Federal Rules or Code of Iowa will be followed when applicable. Notice of the public hearing shall be published as required.

4. **Public Notice.** Public notice of the invitation for bids shall be given a reasonable time prior to the date set for the opening of bids or as required by state code. Such notice may include, but not be limited to, publication in a newspaper, direct mail or emailed from a vendors list comprised of businesses that have expressed a desire to be placed on said vendors list, and posting to the City's electronic bidding website, or relevant contractor plan room service with statewide circulation as per Iowa Code. All notifications shall allow a reasonable time for vendors to prepare their bid prior to bid opening as determined by the Finance Director. In no case shall a bid be advertised for less than one week or seven (7) days.
5. **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time, and the opening place shall be designated in the invitation for bids. The bid amounts, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.
6. **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction. Bids shall be evaluated based on the requirements set forth in the invitation for bids. Requirements may include inspection, demonstration, quality standards, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used in these circumstances. No other criteria may be used in bid evaluation if not set forth in the invitation for bids.
7. **Correction or Withdrawal of Bids.** Correction of inadvertently erroneous bids may be made prior to the posted bid opening time only. Any changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall not be permitted after the bid opening. When it is apparent that an error in a bid has been made and could affect the performance of the bidder or create an enforcement problem for the City, then a low bid may be recalled by the bidder and cause an award to be made to the next lowest responsible bidder.
8. **Tie Bids.** In the event that two or more bidders submit identical bids, the winner shall be determined by following all applicable preferences under state law and city ordinance. After all applicable preferences are applied, and if only one bidder remains, the sole remaining bidder will be awarded the contract. If a tie still exists, the bidder that submitted their bid via the electronic bidding system first will be awarded the contract.
9. **Awards.** The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If all bids for a construction project exceed available funds as certified by the Finance Director, the Finance Director may take reasonable non-material steps to bring the project within budget if possible.
10. **Contractor Evaluation.** Contractors awarded contracts with the City may undergo a standardized evaluation upon completion of the work. The contractor's eligibility status for future projects awards will be governed by current policies adopted by the Davenport City Council which may include, but not be limited to, these evaluation results. The Contractor will be sent a copy of their evaluations.
11. **Multi-Step Sealed Bidding.** When it is considered impractical by the Purchasing Manager, in

concurrence with the Finance Director, to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

### **3:204 Competitive Sealed Proposals.**

1. **Conditions for Use.** When the Purchasing Manager determines that it is either not practicable or advantageous to the City to procure certain types of equipment, supplies, services or construction by competitive sealed bidding, a contract may be entered into by competitive sealed proposals.
2. **Request for Proposals.** A request for proposals shall be issued and shall include a description of the goods or services being requested and all terms and conditions that apply to the procurement.
3. **Public Notice.** Public notice of the request for proposals shall be given in the same manner as provided in Section 3:203 (3) (Competitive Sealed Bidding, Public Notice).
4. **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of contents to competing offerors for the purpose of negotiation. A list of respondents shall be prepared in accordance with the terms of this policy and proposals shall be open for public inspection after contract award.

**A. Evaluation Method.** The request for proposals specifications will list the evaluation criteria and the relative importance of each factor and an overview of the evaluation process.

**Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the request for proposals and under strict compliance with terms of this policy, discussions may be conducted with one or more responsible offerors who submit proposals determined by the Purchasing Manager or designee to be reasonably qualified for the contract award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be granted fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Should discussions and revisions to proposals take place, then a full written report shall be submitted to the Finance Director along with the recommendation of award.

**B. Award.** Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the selection process. The contract file shall contain the rating forms completed by each member of the selection committee used as the basis on which the award is made.

### **3:205 Competitive Quotations**

1. **Conditions for use.** Contracts may be awarded by a semi-formal quotation process when the procurement is valued at over \$3,000 but less than \$50,000, except as provided by ordinance, in **emergency situations** when timing is an issue. A request to use this method must be made in



advance to the Finance Director who will review and approve each request on a case by case basis.

2. ***Competitive Quotation.*** A request for quotations shall be issued to three or more vendors and shall include a purchase description, all contractual terms and conditions applicable to the procurement, and a site visit.
3. ***Quote Deadline.*** The time, place, and manner for filing quotes shall be designated, with vendors submitting quotes via the City's electronic submission system.
4. ***Awards.*** The contract shall be awarded with reasonable promptness by written notice to the vendor submitting the lowest responsive and responsible quote, or all quotes may be rejected.

### **3:206 Sole Source Procurement**

A purchase order may be issued for a piece of equipment, supply, service, or construction item without competition when the requesting agency has provided in writing that there is only one source for the required equipment, supply, service or construction item and the Purchasing Manager has reviewed the request.

### **3:207 Emergency Procurements**

Notwithstanding any other provisions of this policy, the director of any using department may declare an emergency situation when there exists a threat to public health, welfare, or safety as defined in this policy. All emergency procurements shall be made with such competition as is practicable under the circumstances. An Emergency Purchase request form should be completed and signed by the designated staff. A written determination of the basis for the emergency and for the selection of the vendor signed by the department head of the using agency shall be included in the contract file. Emergency purchase forms shall be reviewed and signed by the Finance Director and City Administrator or designee prior to the expense of funds. In the event that it is not practical for a form to be signed prior to the expense of funds, written or verbal approval may be given by the Finance Director and City Administrator and shall be documented as such.

### **3:208 Emergency Purchases**

Agencies shall be permitted to make emergency purchases in those situations where failure to do so could result in an immediate and apparent loss to the City of Davenport.

If and when there is a properly declared "Emergency", purchases can be made without taking competitive bids. However, even then, informal quotes should be obtained when practicable. "Emergency purchase" procedures should be followed when those in authority make a "declaration of emergency". An emergency declaration must be made in writing or confirmed within eight (8) working hours.

### **3:209 Administrative Emergency**

An administrative emergency may be considered to exist when, due to unforeseen circumstances or conditions beyond the reasonable control of using agencies, accidents or failure of mechanical equipment or contractual services occur, which are essential to protect and preserve the interests of the community and its inhabitants, the proper functioning of the government and the efficient

rendering of public services. This may include the breakdown of machinery or vehicles.

In cases of an Administrative Emergency, as declared by a department director and approved by the City Administrator, the appropriate department director is empowered to make such purchases as necessary. However, the department is requested to fully utilize the services of the Purchasing Division, which will give immediate positive response to such needs.

In every case involving an emergency purchase, the department must submit, no later than the following regular business day, a purchase request, detailing information regarding the emergency purchase and a statement defining the Administrative Emergency as approved by the Finance Director and City Administrator.

The Purchasing Division shall maintain current records of all emergency purchases.

### **3:210 Competitive Selection Procedures for Services Specified in Section 2:201 (Authority to Contract for Certain Services)**

1. Conditions for Use. The services specified in Section 2:201 (1) (Authority to Contract for Certain Services – General Authority) shall be procured in accordance with this section, except as authorized under Section 3:206 (Sole Source Procurement) or Section 3:207 (Emergency Procurements) or as specified in City ordinance.
2. Statement of Qualifications. Persons engaged in providing the types of services specified in Section 2:201 (1) may submit statements of qualifications and expressions of interest in providing such types of services. The Purchasing Manager may specify a uniform format for statements of qualifications. These statements of qualifications may be amended as needed by filing a new statement.
3. Public Announcement and Form of Request for Proposals. The Purchasing Division shall give notice of the need for such services through a request for proposals. The request for proposals shall describe the services required, list the type of information required of each offeror, state the relative importance of particular qualifications, and specify the deadline for proposals.
4. Discussions. The Purchasing Manager or City Engineer (or designees) may conduct discussions with any offeror who has submitted a proposal or that has a current statement of qualifications on file to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals by another offeror.
5. Award. Negotiations of compensation shall take place with the offeror ranked number one, based on the evaluation factors set forth in the request for proposals. If compensation determined to be fair and reasonable cannot be agreed upon with the offeror ranked number one, the negotiations will be formally terminated. If proposals were submitted by one or more offerors determined to be qualified, negotiations may be conducted with another offeror(s), in order of their respective qualification ranking. The contract shall be awarded to the qualified offeror with whom compensation determined to be fair and reasonable has been negotiated.

### **3:301 Cancellation of Invitation for Bids or Request for Proposals.**

An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids

or proposals may be rejected in whole or in part when it is determined to be in the best interest of the City. The reason, therefore, shall be documented and made part of the contract file.

### **3:401 Responsibility of Bidders and Offerors**

Determination of Non-Responsibility. A written determination of non-responsibility of a bidder or offeror shall be made in accordance with the terms of this policy and ordinance. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

Right of Non-disclosure. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside the Purchasing or Engineering Office without prior written consent by the bidder or offeror unless required by Iowa law.

### **3:402 Prequalification of Suppliers**

Prospective suppliers may be prequalified for particular types of equipment, supplies, services or construction. Solicitation distribution lists of potential vendors shall include, but shall not be limited to, such prequalified suppliers.

### **3:403 Cost or Pricing Data**

1. Contractor Certification. A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and trust, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date, prior to the date of:
  - A. The pricing of any contract awarded by competitive sealed proposals Section 3:204 (Competitive Sealed Proposals) or pursuant to the sole source procurement authority Section 3:206 (Sole Source Procurement), where the total contract price is expected to exceed an amount established by the Finance Department.
  - B. The pricing of any change order or contract modification that is expected to exceed an amount established by the Finance Department.
2. Price Adjustment. Any contract change order or contract modification under which a certificate is required shall contain a provision that the price to the City, including profit or fee, shall be adjusted to exclude any significant sums by which the City finds that such price was increased because the contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
3. Cost or Pricing Data Not Required. The requirements of this section need not be applied to contracts:
  - A. Where the contract price is based on adequate price competition.
  - B. Where the contract price is based on established catalogue or market price.
  - C. Where contract prices are set by law.
  - D. Where it is determined in writing in accordance with regulations promulgated, this policy or ordinance may be waived, and the Purchasing Manager states the reasons for such a waiver

in writing and secures the concurrence of the Finance Director.

### **3:501 Types of Contracts**

Subject to the limitations of this section and federal and state law, any type of contract, which will promote the best interest of the City, may be used; provided that the use of a cost-plus-a-percentage of cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such a contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the equipment, supplies, services or construction required except under such a contract. Concurrence of the Finance Director in writing is required to be a part of the contract file.

### **3:502 Approval of Accounting System**

Except with respect to firm fixed price contracts, no contract type shall be used unless it has been determined by the Finance Director or designee that:

- A. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.
- B. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

### **3:503 Multi-Term Contracts**

1. Specified Period. A contract for supplies or services may be ascertained for any period of time deemed to be in the best interests of the City, unless otherwise provided by law, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation, and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for the succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.
2. Determine Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
  - A. That estimated requirements cover the period of the contract and are reasonably firm and continuing.
  - B. That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.
3. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled. The contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

### **3:601 Right to Audit Records**

1. Audit of Cost or Pricing Data. The City may, at the determination of the Finance Director or

designee, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 3:403 (Cost or Pricing Data). Books and records that relate to such cost or pricing data shall be retained by the contractor for three years from the date of final payment under the contract (unless a shorter period is otherwise authorized in writing by the Finance Director or designee).

2. Contract Audit. All contracts shall entitle the City to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract (other than firm fixed-price contract) relative to that contract or subcontract. Such books and records shall be maintained from the date of final payment, under a prime contract or a subcontract, for a period of three (3) years (unless a shorter period is otherwise authorized in writing by the Finance Director).

### **3:701 Finality of Determination**

The determinations required by Section 3:203 (6) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3:204 (7) (Competitive Sealed Proposals, Award), Section 3:206 (Sole Source Procurement), Section 3:207 (Emergency Procurement), Section 3:208 (Emergency Purchases), Section 3:209 (Administrative Emergency), Section 3:210 (5) (Competitive Selection Procedures for Services Specified in Section 2:201), Section 3:401 (1) (Responsibility of Bidders and Offerors, Determination of Non-Responsibility), Section 3:403 (3) (Cost or Pricing Data, Cost or Pricing Data not Required), Section 3:501 (types of Contracts), Section 3:502 (Approval of Accounting System), and Section 3:503 (2) (Multi-Term Contracts, Determine Prior to Use), are final and conclusive as stated in this policy unless they are clearly erroneous, arbitrary, capricious, or contrary to federal, state law or city ordinance.

### **3:702 Reporting of Anticompetitive Practices**

When for any reason the Purchasing Manager shall suspect collusion or other anticompetitive practices among bidders or offerors, he shall notify the Finance Director of all relevant facts in writing.

### **3:703 Retention of Procurement Records**

All procurement records shall be retained and disposed of in accordance with record retention guidelines and schedules approved by the City Council and shall be made available upon request by proper authority.

### **3:704 Record of Procurement Actions Taken Under Section 3:206 (Sole Source Procurement) and Section 3:207 (Emergency Procurements).**

1. Contents of Record. The Purchasing Manager shall maintain records of all contracts made under Section 3:206 and Section 3:207 for a minimum of five (5) years. The record shall contain:
  - A. Department request and documentation.
  - B. Each vendor's name.
  - C. The amount and type of each contract.
  - D. A listing of the supplies, services or construction procured under each contract.
2. Annual Report Required. Copies of such reports shall be available to the Finance Director upon request. The records shall be available for public inspection.

## **SECTION 4 – Specifications**

Every effort shall be made to properly prepare specifications. Specifications shall define the item or service to be purchased.

Adequate specifications shall:

1. Be specific.
2. Accurately describe the items or services required.
3. Be worded simply, with clear meaning.
4. State intended usages with any requirements of exceptional nature.
5. Conform as nearly as possible to a nationally recognized standard description.
6. Be written to ensure the greatest possible competition. Where possible, a minimum of three acceptably known or manufacturer's brands, available from a minimum of three different suppliers, shall be specified. This procedure is not, in any way, intended to eliminate or discourage other manufacturers of products of like merit.

The Purchasing Division's obligation to the City of Davenport and its suppliers is that the widest possible competition be encouraged where practical, consistent with quality required by the using department. For regulations regarding specifications for IT Hardware refer to Section 13:201 IT Hardware.

### **4:101 Definition of Terms**

'Specification' means any description of the physical or functional characteristics, or of the nature of a type of equipment, supply, service, or construction item. Specifications may include a description of any requirement for inspection testing, or preparing a piece of equipment, supply, service, or construction item for delivery.

### **4:201 Duties of the Purchasing Division and Relationship with Using Department**

The Purchasing Division, in cooperation with the using agencies, shall govern the preparation, maintenance, and content of specifications for equipment, supplies, services and construction required by the City except as noted in City ordinance. The Purchasing Division shall prepare, issue, offer revisions, maintain, and/or monitor the use of specifications for equipment, supplies, services, and construction required by the City and shall obtain the advice and assistance from using agencies in the process. The using agencies shall prepare the draft specification of its requirements that includes technical specifications and forward to the Purchasing Division.

### **4:202 Exempted Items**

Specifications for equipment, supplies, services, or construction procured under Sections 2:201 (Authority to Contract for Certain Services) and 2:202 (Exception), shall be prepared by using department in accordance with the provisions of this policy.

### **4:203 Maximum Practicable Competition**

All specifications shall seek to promote overall economy for the purpose intended and encourage

competition in satisfying the City's needs, and shall not be unduly restrictive.

#### **4:204 Specifications Prepared by Architects and Engineers**

The requirements of this policy regarding the purposes and non-restrictiveness of specifications shall apply to all specifications, inclusive, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

### **SECTION 5 – Construction Contracts**

#### **5:101 Definitions of Terms Used in this Section**

Architect-Engineer (A/E) and land surveying services are those professional services within the scope of the practice of architecture, professional engineering, or land surveying as defined by the laws of the State of Iowa.

#### **5:201 Selection of Methods of Construction Contracting Management**

1. Responsibility for Selection of Methods. The Purchasing Division, or Engineering Division when applicable, will evaluate as many alternative methods of construction management as it may determine to be feasible. The Division shall:
  - A. Set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project;
  - B. Recommend in writing who shall be responsible for carrying out the construction project;
  - C. Execute and include in the contract file a written statement setting forth the facts that led to the selection of a particular method of construction management for each project.
2. Types of Construction Contracting Management. It is recognized that at least the following methods are currently being used for control and coordination of construction projects:
  - A. A single price contractor (including a turnkey or design-build contractor).
  - B. Multiple prime contractors managed by:
    - (1) A single price contractor (including a turnkey or design-build contractor);
    - (2) A construction manager (CM);
    - (3) A construction manager at risk (CMAR);
    - (4) The City Engineer or designee, or the City's Project Manager for the project.
  - C. In the event that the City chooses to use a CM or CMAR, selection criteria must meet the requirements of Iowa Code § 26A.
3. Unacceptable Method of Construction Contracting Management. A contract clause that requires separate prime contractors to cooperate and coordinate with each other without central planning and a management coordinator is not considered an acceptable method of construction contracting management.
4. Contract Management Specified by Federal or State Law. Should federal or state law require by specific statute the method of managing a particular project, such statute shall prevail. A copy of

such statute and written explanation shall be inserted in the project file.

### **5:301 Bid Security**

1. Requirements for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Iowa, or the equivalent in cash or a certified check. Nothing herein prevents the requirement of such a bond on construction contracts estimated to be under \$100,000 when the circumstances warrant.
2. Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.
3. Rejection of Bids for Non-compliance with Bid Security Requirements. When the invitation for bids requires security, with explicit instructions on how to submit the security and acceptable means of security, non-compliance requires the bid to be rejected.
4. Withdrawal of Bids. After the bids are opened, they shall be irrevocable for sixty days, or the period specified in the invitation for bids, except as provided in Section 3:203 (Competitive Sealed Bidding). If a bidder is permitted to withdraw his bid before award, no action shall be made against the bidder or the bid security.

### **5:302 Contract Performance and Payment Bonds**

1. When Required – Amounts. When a construction contract is awarded in excess of \$100,000, the following bonds or security shall be delivered to the City and shall become binding on the parties upon execution of the contract.
  - A. A performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Iowa, or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the price specified in the contract.
  - B. A payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Iowa, or otherwise secured in a manner satisfactory to the City, for the protection of all personnel supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
  - C. In addition, a maintenance bond may be required for some projects. Requirement will be specified in the bid documents including length of term, etc.
2. Reduction of Bond Amounts. The Finance Director, upon written recommendation from the Purchasing Manager or Director of the using department, may authorize the reduction of the performance and payment bonds to 50% of the contract price for each bond up to \$25,000.
3. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the City to require a performance bond for any project, or other security in addition to the stated bonds, or in circumstances other than specified in Section 5:302 (1) (When Required – Amounts).



### **5:303 Bond Forms and Copies**

1. Bond Forms. The Purchasing Division may provide the form for the bonds required by this section or a standard form issued by a bonding company is acceptable.
2. Certified Copies of Bonds. Any person may request and obtain from the City the certified bond copy provided to the City. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

### **5:401 Contract Clauses and Their Administration**

1. Contract Clauses. This policy shall allow for the inclusion in City construction contracts of clauses providing for adjustments in prices, time of performance, or other contractual provisions, as appropriate, and covering the following subjects:
  - A. The unilateral right of the City to order in writing:
    - (1) Changes in the work within the scope of the contract.
    - (2) Changes in the time of performance of the contract that do not alter the scope of the contract work.
  - B. Variations occurring between estimated quantities of work in a contract and actual quantities.
  - C. Suspension of work ordered by the City.
  - D. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site condition clauses promulgated by the City need not be included in a contract:
    - (1) When the contract is negotiated.
    - (2) When the contractor provides the site or design.
    - (3) When the parties have otherwise agreed with respect to the risk of differing site condition.
2. Price Adjustments
  - A. Adjustments in price pursuant to clauses promulgated under Subsection (1) of this Section shall be computed in one or more of the following ways:
    - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
    - (2) By unit prices specified in the contract or subsequently agreed upon.
    - (3) By the cost attributable to the events or situations under such clause(s) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the City.
    - (4) In such other manner as the contracting parties may mutually agree.
    - (5) In the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clause(s) with adjustment of profit or fee, all as computed by the City in accordance with applicable sections of this policy under Section 7 (Cost Principles) and subject to provisions of Section 9 (Legal and Contractual Remedies).

3. Additional Contract Clauses. The Purchasing Manager or City Engineer shall require the inclusion in City construction contracts of clause(s) providing for appropriate remedies and covering the following subjects:
  - A. Liquidated damages as appropriate.
  - B. Specified excuses for delay or nonperformance.
  - C. Termination of the contract for default.
  - D. Termination of the contract in whole or in part for the convenience of the City.
4. Modifications of Required Clauses. The Purchasing Manager or City Engineer may, with written confirmation from the City's legal counsel or as allowed by City ordinance, vary clauses for inclusion in any particular City construction contract, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the instruction for bids or request for proposals.

#### **5:402 Fiscal Responsibility**

Every contract modification, change order, or contract price adjustment under a construction contract with the City in excess of \$1,500 shall be subject to prior written certifications of the Finance Director or designee. In the event that the change results in the total project being over budget, the contract modification, change order, or adjustment in contract price shall not be executed until the Finance Director has authorized that sufficient funds are available. Should additional funding not be available, the Purchasing Manager, City Engineer and/or Project Manager shall report to the Finance Director the necessary scope of adjustment of the project or contract so as to permit the degree of completion that is feasible within the total funds available.

#### **5:501 Architect-Engineer and Land Survey Services**

1. Applicability. Architect-Engineer (A/E) and land survey services shall be procured as provided in this section except as authorized by Sections 3:206 (Sole Source Procurement) and 3:207 (Emergency Procurements).
2. Policy. It shall be the policy of the City to publicly announce all requirements for architect-engineer and land survey services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of service required.

Architect-Engineer Selection Committee. In the procurement of A/E and land survey services, the Purchasing Manager or the City Engineer shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. The City Engineer, or designee, will be a member of all selection committees for A/E and land survey contracts over \$10,000. The selection committee shall consist of individuals with the skills and expertise to evaluate qualifications and associated performance data. The selection committee shall evaluate current statements of qualifications and performance data on file with the City, together with statements or proposals submitted regarding the proposed contract and may conduct discussions with one or more firms. The firms deemed to be the most highly

qualified to provide the services required shall be selected in order of preference, based upon criteria established and published in the request.

3. Negotiations. The selection committee (or a representative of the committee) shall negotiate a contract with the highest qualified firm(s) for A/E or land survey services at compensation that the selection committee determines in writing to be fair and reasonable to the City. In making this decision, the selection committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the committee be unable to negotiate a satisfactory contract with the firm(s) considered to be the most qualified, the committee shall formally terminate negotiations. Negotiations may be terminated on the basis of price, if the price is beyond market price. Negotiations shall then commence with the next most qualified firm(s), and so on.
4. Vendor Evaluation. Firms awarded contracts for A/E services with the City may undergo a standardized evaluation upon completion of the work. The firm's eligibility status for being awarded future contracts will be governed by current policies adopted by the Davenport City Council which may include, but not be limited to, these evaluation results.

## **SECTION 6 – Modification and Termination of Contracts for Equipment, Supplies and Services**

### **6:101 Contract Clauses and Their Administrations**

1. Contract Clauses. The Purchasing Manager or City Engineer may require the inclusion of clauses providing for adjustments in prices, time of performance, or other contractual provisions as appropriate covering the following subjects:
  - A. The unilateral right of the City to order in writing:
    - (1) Changes in the work within the scope of the contract
    - (2) Temporary stopping of the work or delaying performance.
  - B. Variations occurring between estimated quantities of work in a contract and actual quantities.
2. Price Adjustments. Adjustments in price pursuant to clauses promulgated under Subsection 1 of this Section shall be computed on one or more of the following ways:
  - A. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
  - B. By unit prices specified in the contract or subsequently agreed upon.
  - C. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon.
  - D. In such other manner as the contracting parties may mutually agree.
  - E. In the absence of agreement by the parties, by a unilateral determination by the City of the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the City in accordance with applicable sections of this policy under Section 7 (Cost Principles) and subject to the provisions of Section 9 (Legal and Contractual Remedies) of this policy.
3. Additional Contract Clauses. Contract clauses covering but not limited to the following subjects

may be included in City contracts as needed given the scope of work to be performed:

- A. Liquidated damages as provided.
  - B. Specified excuses for delay or non-performance.
  - C. Termination of the contract for default.
  - D. Termination of the contract in whole or in part for the convenience of the City.
4. Modification of Clauses. The City may vary the clauses promulgated by this policy under Subsection 1 (Contract Clauses) and Subsection 3 (Additional Contract Clauses) of this Section for inclusion in any particular City contract provided that any variations are supported by a written determination that states the circumstances justifying such variation and has the concurrence of the City's legal counsel and provided that notice of any such material variation be included in the invitation for bids or request for proposals.

## **SECTION 7 – Cost Principles**

### **7:101 Cost Principles**

This policy shall require the Purchasing Manager and Director of the appropriate department, or the City Engineer to determine the allowability of incurred costs for the purpose of reimbursing said costs under specific contract provisions which provide for the reimbursement of costs.

Cost principles may be modified by contract only if a written determination is approved by the Finance Director and is not in violation of Section 3 (Source Selection and Contract Formation) of this policy.

## **SECTION 8 – Supply Management**

### **8:101 Definitions of Terms Used in this Section**

- 1. '*Excess Supplies*' means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using department in possession of the supplies.
- 2. '*Expendable Supplies*' means all tangible supplies other than non-expendable supplies.
- 3. '*Non-Expendable Supplies*' means all tangible supplies having an original acquisition cost of over \$100.00 per unit and a probable useful life of more than one year.
- 4. '*Supplies*' means, for the purposes of this Section, supplies owned by the City (See Section 1:301 (21) Supplies).
- 5. '*Surplus Supplies*' means any supplies other than expendable supplies no longer having any use to the City. This includes obsolete supplies, scrap metals, and non-expendable supplies that have completed their useful life cycle.

### **8:201 Supply Management**

The Finance Department shall provide documented controls accounting for the inventory control of all supplies and equipment during:

1. Entire life cycle.
2. Transfer of excess supplies or equipment.
3. The sale, lease or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by this policy or City ordinance.

### **8:301 Allocation of Proceeds from Sale or Disposal of Surplus Supplies**

Unless otherwise provided by law, the Finance Director shall be empowered to allocate proceeds from the sale, lease, or disposal of surplus supplies or equipment.

## **SECTION 9 – Legal & Contractual Remedies**

### **9:101 Authority to Resolve Protested Solicitations and Awards.**

1. Right to Protest. Any participating bidder, offeror, or contractor who is alleged to be aggrieved in connection with the solicitation or award of a contract may protest to the Finance Director. The protest shall be submitted in writing within three (3) days after such aggrieved person knows or should have known of the city's intent to award a contract. A vendor may only protest under the following circumstances:
  - A. An Invitation to Bid in which the vendor that was low bid and was determined by the city to be not Responsive<sup>a</sup> or Responsible<sup>b</sup>. This does not apply to Request for Proposals and Request for Qualifications.
    - a. Definition of Responsive Bidder - Bidder has bid according to specifications without any conditions, qualifications, or exclusions and in compliance with the bid form and other documents.
    - b. Definition of Responsible Bidder - Bidder has the capacity, not only financially, but also the skills, manpower, experience, and performance ability to complete the project as specified.
2. Finance Director's Response. A protest letter must be sent to the Finance Director. The Finance Director shall review the protest and respond to the vendor in writing with a determination as to whether the vendor was not Responsive<sup>a</sup> or Responsible<sup>b</sup>.
3. City Administrator's Response. If the protest is not resolved by mutual agreement between the Finance Director and the protestor, the protestor may make a written appeal to the City Administrator. The City Administrator shall review the protest and respond to the vendor in writing and with a determination as to whether the vendor was or was not responsive<sup>a</sup> or responsible<sup>b</sup>.
4. Notice of Decision. A copy of the decision under Subsection 2 and 3 of this Section shall be mailed, emailed, or otherwise furnished immediately to the protestant and any other party intervening.
5. Authority to Resolve Protests. The City Administrator and the Finance Director shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or

prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with ordinances promulgated by the City Council.

6. Finality of Decision. A decision under Subsection 3 of this Section shall be final and conclusive.
7. Stay of Procurements During Protests. In the event of a timely protest under Subsection 1 of this Section, the City shall not proceed further with the solicitation or with the award of the contract unless the City Administrator or the Finance Director, after consultation with the Purchasing Manager and the user department, makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the City.

#### **9:102 Authority to Debar or Suspend**

1. Authority. The Finance Director shall have authority to debar a person or firm for cause from consideration for award of contracts. The debarment shall not be for a period of more than five years.
2. Causes for Debarment or Suspension. The causes for debarment or suspension including but are not limited to, the following:
  - A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
  - B. Conviction under State or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a City contractor.
  - C. Conviction under State or Federal statutes arising out of the submission of bids or proposals.
  - D. Violation of contract provisions, regarded to be so serious as to justify debarment action including, but not limited to, the following:
    - (1) Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
    - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more previous or current contracts.
  - E. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
  - F. Any other cause the Finance Director determines to be so serious and compelling as to affect responsibility as a City contractor, including but not limited to debarment by another governmental entity.
  - G. For violation of the ethical standards act set forth in Section 12 (Ethics in Public Contracting).
  - H. For receiving an unsatisfactory evaluation upon completion of a project or contract.
  - I. Other causes as noted in City ordinance section 2.12.230.
3. Decision. The Finance Director shall issue a written decision to debar or suspend. The decision shall:
  - (1) State the reasons for the action taken.
  - (2) Inform the debarred or suspended person involved of his rights to administrative review as provided in this Section.

4. Notice of Decision. A copy of the decision under Subsection 3 of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
5. Appeal to City Administrator. The vendor must appeal to the City Administrator within 3 days of notice.
6. Finality of Decision. A decision under Subsection 3 of this Section shall be final and conclusive; the City Administrator is the final and only appeal level.

#### **9:103 Authority to Resolve Contract and Breach of Contract Controversies**

1. Applicability. This section applies to controversies between the City and a contractor that arise under, or by virtue of, a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. The protest shall be submitted in writing within three days after such aggrieved person knows or should have known of the facts giving rise thereto.
2. Authority. The Finance Director is authorized to settle and resolve a controversy described in Subsection 1 of this Section.

### **SECTION 10 – INTER-GOVERNMENTAL RELATIONS**

#### **10:101 Definitions of Terms Used in this Section**

1. *‘Cooperative Purchasing’* means procurement conducted by or on behalf of, more than one public procurement unit or by a public procurement unit with an external procurement agency.
2. *‘External procurement agency’* means any buying organization not located in this City, which if located in this City, would qualify as a local public procurement unit. An agency of the State of Iowa or the Federal Government is an external agency.
3. *‘Local public procurement unit’* means any county, city, town, and any other subdivision of the State of Iowa or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of equipment, supplies, services or construction, and any nonprofit corporation operating a charitable hospital.

#### **10:201 Cooperative Purchasing Authorized**

The Purchasing Manager, with the concurrence of the Finance Director, may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any equipment, supplies, services, or construction with one or more public procurement units or external procurement agencies in accordance with an agreement entered into between participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended State or Federal public procurement unit contracts, which are made available to local public procurement units.

### **10:202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit**

The Purchasing Manager may sell to, acquire from, or use any supplies belonging to another local public procurement unit or external public agency independent of the requirements of Section 3 (Course Selection and Contract Formation) and Section 8:201 (Supply Management) of this policy.

### **10:203 Joint Use of Facilities**

The Purchasing Manager, with concurrence of the Finance Director, may enter into agreements for the common use or lease of warehousing facilities, capital equipment and other facilities with another public or external procurement unit under terms agreed upon between both parties.

### **10:204 Supply of Personnel, Information, and Technical Services**

1. Supply of Personnel. The Purchasing Manager with concurrence of the Finance Director may, upon written request from another public or external procurement unit, provide personnel to the requesting public or external procurement unit. The requesting unit shall pay the City the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.
2. Supply of Services. The informational, technical, and other services of the City's Purchasing Division may be made available to any other public or external procurement unit, provided that the City's services shall have precedence over the requesting unit. The requesting unit shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.
3. Purchasing Information Services. Upon request, the Purchasing Manager may make available to public or external procurement units the following services among others:
  - A. Standard forms
  - B. Printed policies
  - C. Product specifications and standards
  - D. Quality assurance testing services and methods
  - E. Qualified products lists
  - F. Source information
  - G. Common use commodities listing
  - H. Supplier prequalification information
  - I. Supplier performance ratings
  - J. Debarred and suspended bidder's list
  - K. Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms
  - L. Contracts or published summaries thereof, including price and time of delivery information
4. City Technical Services. The City, through the Purchasing Manager, may provide the following technical services among others:
  - A. Development of product specifications.
  - B. Development of quality assurance test methods.



## **SECTION 11 – Assistance to Small and Disadvantaged Businesses**

### **11:101 Definition of Terms Used in this Section**

For purposes of this policy the City of Davenport shall use the definitions set forth by the State of Iowa Disadvantaged Business Enterprise (DBE) Program.

### **11:201 Statement of Policy and Its Implementation**

1. Statement of Policy. It shall be the policy of the City to assist small and disadvantaged businesses by providing information and assistance related to the bidding process and contractual requirements.
2. Implementation. The Purchasing Division shall implement the policy set forth in Subsection 1 of this Section in accordance with regulations promulgated by the State of Iowa under this Section.
3. Certification of DBE firms. The City of Davenport shall comply with and participate in the State of Iowa DBE Certification Program as federally mandated.

### **11:202 Duties of the Purchasing Division**

1. Assistance with City Policies. When requested, the Purchasing Division shall provide assistance to the City's small and/or disadvantaged businesses in learning how to do business with the City.
2. Special Publications. The Purchasing Division shall give special publicity to procurement procedures designated to assist small and/or disadvantaged businesses in learning how to do business with the City.
3. Source Lists. The Purchasing Division shall make available the Iowa DOT DBE directory source lists of disadvantaged businesses for the purpose of encouraging procurement from such small and disadvantaged businesses. The Directory can be accessed at the following link: <https://secure.iowadot.gov/DBE/Home/Index/>
4. Solicitation Lists. To the extent deemed by the Purchasing Manager to be appropriate and as may be required by regulation, the Purchasing Division shall include a representative sampling of small and/or disadvantaged business on all solicitation mailing lists.
5. Solicitation of Small and Disadvantaged Businesses. The Purchasing Manager shall assure that small and/or disadvantaged businesses are solicited on each procurement when appropriate.
6. Training Programs. Staff from the Purchasing Division shall participate in special training programs conducted by the City or other agencies that shall assist small and disadvantaged businesses in learning how to do business with the City when possible.

### **11:203 Discretionary Duties**

1. Bonding. Notwithstanding other provisions of this policy, City ordinances, and/or state law, the Purchasing Manager with concurrence of the Finance Director, may reduce the level or change

the type of bonding required or accept alternative forms of security, to the extent reasonably necessary to encourage procurement from small and disadvantaged businesses.

2. Progress Payment. The Purchasing Manager with concurrence of the Finance Director may make special provisions for progress payments, as deemed reasonably necessary to encourage procurement from small and disadvantaged businesses.

#### **11:204 Report to the Affirmative Action Commission**

The Purchasing Manager shall report in writing to the Affirmative Action Commission concerning the awarding of contracts to small and disadvantaged businesses upon request.

#### **11:301 Compliance with Federal Requirements**

Where procurement involves the expenditure of federal assistance or contract funds, the Purchasing Manager or City Engineer shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected by City ordinance of this policy.

### **SECTION 12 – Ethics in Public Contracting**

#### **12:101 Statement of Policy**

Public employees must discharge their duties impartially so as 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 procurement organization.

#### **12:102 General Standards of Ethical Conduct**

1. General Ethical Standards for Employees. Any attempt to realize personal gain inconsistent with the proper discharge of the employee's duties is a breach of public trust. All City employees must meet the specific standards set forth in Section 12.
2. General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section is also a breach of ethical standards.

#### **12:103 Criminal Sanctions**

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of City ordinance or State code, they shall be punishable as provided therein.

#### **12:104 Employee/Officer Interest in Public Contract**

Regulations and procedures related for employee/officer interest in public contract are contained in Iowa Code 362.5 and City of Davenport Administrative Policy 4.10 [APPENDIX E].

#### **12:105 Conflict of Interest**

No employee shall participate in the selection or in the award or administration of a contract or purchase if a conflict of interest, real or apparent, exists. Such conflict of interest would arise when an

employee/officer has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

#### **12:106 Employee Disclosure Requirements**

1. Disclosure of Financial Interest. Any employee/officer who may benefit from any City contract with a business in which the employee has a financial interest shall disclose their financial interest via the Financial Interest Disclosure (FID) form.
2. Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report such benefit, is in breach of the ethical standards of this Section.

#### **12:107 Gratuities and Kickbacks**

1. Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee 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 part of a program requirement or purchase request, influencing the auditing, or in any other advisory capacity in any proceeding or application, request 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.
2. Kickbacks. It shall be a breach of ethical standards 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, higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.
3. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in a special clause or form, in every contract and solicitation therefore.

#### **12:108 Prohibition Against Contingent Fees**

1. Contingent Fees. It shall be a breach of ethical standards for a person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
2. Representation of Contractor. Every person, before being awarded a City contract shall represent, in writing, that such person has not retained anyone in violation of Subsection 1 of this Section. Failure to do so constitutes a breach of ethical standards.
3. Contract Clause. The representation prescribed in Subsection 2 of this Section shall be conspicuously set forth in every contract and solicitation therefore.

#### **12:109 Use of Confidential Information**

It shall be a breach of ethical standards for any employee or former employee knowingly to use

confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

### **12:201 Remedies Against Employees Who Breach Ethical Standards**

1. Existing Remedies Not Impaired. City ordinance and administrative remedies against employees, which are in existence or may be promulgated, shall not be impaired by this policy.
2. Supplemental Remedies. In addition to existing remedies for breach of ethical standards, the Finance Director or designee may recommend any one or more of the following:
  - A. Oral or written warnings or reprimands,
  - B. Suspension with or without pay for specified periods of time, and
  - C. Termination of employment.
3. Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of ethical standards of this policy shall be recoverable by the City as provided in Section 12:203 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
4. Due Process. All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an appointment for a hearing shall be provided prior to imposition of any suspension or termination of employment.

### **12:202 Remedies Against Non-Employees Who Breach Ethical Standards**

1. Existing Remedies Not Impaired. Civil and administrative remedies against non-employees, which are in existence on the effective date of this policy, shall not be impaired.
2. Supplemental Remedies. In addition to existing remedies for breach of ethical standards by City code or State law, the Finance Director or designee may impose any one or more of the following:
  - A. Written warnings or reprimands.
  - B. Termination of transactions.
  - C. Debarment or suspension from being a contractor or subcontractor under City contracts.
3. Right to Recover from Non-Employees Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach of this policy by a non-employee shall be recoverable by the City as provided in Section 12:203 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
4. Right of the City to Debar or Suspend. Debarment or suspension may be imposed by the Finance Director in accordance with the procedures set forth in Section 9:102 (Authority to Debar or Suspend), for breach of ethical standards, in this policy.
5. Due Process. All procedures under this Section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a City contract.

## **12:203 Recovery of Value Transferred or Received in Breach of Ethical Standards**

1. General Provisions. The value of anything transferred or received in breach of the ethical standards of this policy or City ordinances promulgated hereunder by an employee or a non-employee shall be recovered by the Finance Director.
2. Recovery of Kickbacks by the City. Upon showing that a subcontractor or a higher tier subcontractor was involved in kickbacks in connection with the award of a subcontract or order, it shall be presumed that the amount of kickback was included in the price of the subcontract or order and ultimately borne by the City, and therefore, will be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

## **SECTION 13 – MISCELLANEOUS PROVISIONS**

### **13:101 Disposal of Items of Nominal Value**

City of Davenport employees may request to obtain surplus supplies that are set to be disposed of at the discretion of the department director. Surplus supplies that employees may freely take include pallets, cardboard boxes, and/or other routinely disposed of items. Supplies that are non-routinely disposed of will require special permission. Employees may not sell any acquired items and must dispose of them properly once the item is no longer of use.

### **13:201 IT Hardware**

1. All procurement for IT related systems, software, or hardware must be approved by the IT department, including purchases intended to be made with p-cards. Items excluded from the approval include ancillary items such as keyboards, headphones, speakers, webcams or conferencing technology, and mice. For items not listed herein, contact should be made with IT prior to the purchase.
2. Due to standard practices within this market, it is common place for vendors to refuse to assist the City in developing specifications for prospective purchases, unless they are allowed to bid. This practice creates a situation wherein the City would have to pay a vendor to create specifications which in turn would cause the overall price of acquisition to be artificially increased. Accordingly, within this market segment the City will allow a vendor who provides us with specifications to bid even though that may give that vendor a competitive advantage regardless of any other provision of this policy. This provision will allow the City to bring the best value and return on the taxpayer's money.

## APPENDIX A

### **FEDERAL REQUIREMENTS FOR TRANSIT PURCHASES**

#### **Federal Transit Administration Regulations**

The Federal Transit Administration (FTA) has set forth requirements that must be followed in the solicitation, award and administration of contracts for the City of Davenport's Transit Division. These requirements are based on the common grant rules, Federal statutes, Executive Orders and their implementing regulations, and FTA policy. The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements. For example, a receipt or bill accompanying a \$100 credit card purchase might contain all of the required information to support that procurement. Procurements that are more substantial may require extensive documentation.

#### **1. Procurement File**

Every Procurement file for a FTA funded transit item shall contain a completed "Transit Procurement Checklist" and every applicable item that is required on the checklist as well. This includes:

- A. Items known as the "4 basics"
  - A. Rationale for method of procurement
  - B. Rationale for selection of contract type
  - C. Reasons for vendor/contractor selection
  - D. Basis of contract price
- B. Independent Cost Estimate (Over \$50K)
- C. Over \$10k form
- D. A list of all applicable FTA clauses, approved by both Transit Supervisor and Purchasing Manager
- E. A posting of the public hearing and the agenda item showing the item was passed if construction project over \$100,000
- F. Current SAM.gov printout
- G. All submitted bids/proposals if competitive procurement process was administered
- H. Cost/Price Analysis
- I. Approval by City Council (Over \$50k)
- J. Proof of Insurance \*when required
- K. Signed Contract
- L. Approved Purchase Order
- M. Documentation of receipt of product/service
- N. Invoice referencing PO
- O. Sole/Single Source documentation if sole/single source
- P. Any additional materials that support the above-mentioned items
- Q. Any additional materials that may be necessary to show the procurement was completed following Federal, state, and local regulations

#### **2. Procedure for developing an Independent Cost Estimate (ICE)**

In order to ensure that the City is receiving a fair and reasonable price for products or services, it shall be the policy of the City to develop a written Independent Cost Estimate (ICE) for every procurement and change order for the transit division of public works that is expected to be of a \$50,000 or more value. The purpose of developing an ICE is to provide a benchmark for evaluating the reasonableness of a vendor's proposed cost.

The method and degree of the written ICE is dependent upon the facts surrounding a given procurement situation, however, the written ICE must address the pertinent elements of the proposed procurement action.

- A. An ICE may be developed in-house by City Staff or using outside parties or both

1. If an ICE is prepared using an outside party appropriate steps must be taken to ensure that conflicts of interest are avoided and that no outside parties obtain a competitive advantage from advance knowledge of the estimate
  - a. An ICE cannot be developed with any direct input from a contractor or vendor who is expected to bid on the related procurement
- B. An ICE will be prepared before solicitation
- C. An ICE will include the scope of work
- D. An ICE will include the contract action type (new, option exercise, amendment/modification)
- E. An ICE will include a narrative outlining how the pricing information was obtained
- F. An ICE can be calculated using
  1. Prior historical rates and information
  2. Catalog prices/public published price lists
  3. Comparison of previous bid prices
  4. Outreach and market survey
- G. An ICE should include detailed breakdowns of materials, travel, other direct costs, and each subtask of the procurement, if possible

When procuring off of a state contract or piggybacking off of another contract, the City may request the ICE that was performed by the agency that did the original competitive procurement, if the ICE contains all the necessary elements the city may keep and use the ICE prepared by the outside agency in lieu of developing an additional one.

A written record of the ICE must be retained in the Procurement file for procurements or change orders over \$50,000.

### **3. Procedure for developing a Price Analysis**

In order to ensure that the city is receiving a fair and reasonable price for goods and services and in procurements where there is adequate competition between potential vendors, the city will perform a Price Analysis for every procurement by the transit division that is over \$50,000 in value.

- A. Normally, adequate competition establishes a fair and reasonable price, the goal of developing a Price Estimate is to ensure that is the case.
- B. A price analysis is a simple comparison of the prices submitted by the vendors to each other and the Independent Cost Estimate (ICE)
- C. A price analysis can also consider prior historical prices, inflation, published catalog prices, third-party estimates if the city feels the prices submitted by vendors and the ICE are not sufficient to establish if the prices submitted by vendors are fair and reasonable.
- D. A written record of a Price Analysis shall be retained in the Procurement file.

### **4. Procedure for developing a Cost Analysis**

In order to ensure that the city is receiving a fair and reasonable price for goods and services in procurements for the transit division where there is not an opportunity to evaluate the price against other commercially available items of similar products or services, such as in Requests for Qualifications for Architecture and Engineering Services where only one cost proposal is solicited from the highest ranking firm or in sole source procurements, the City will develop a cost analysis for those procurements that have a value over \$50,000.

- A. A Cost Analysis is intended to look at each aspect of the project separately, including, but not limited to, labor rates, materials, travel, overhead, profit and other direct costs and determine if they are fair and reasonable.
- B. A Cost Analysis may verify cost data or pricing data by evaluating:
  - A. The necessity for, and reasonableness of, proposed costs, including allowances for contingences
  - B. Projection of the offeror's cost trends, on the basis of current and historical pricing data

- C. The application of audited or negotiated indirect cost rates, labor rates, and the cost of money or other factors
- C. A Cost Analysis may evaluate the effect of the offeror's current practices on future costs with the goal of ensuring that past inefficient or uneconomical past practices are not projected into the future.
- D. A Cost Analysis may compare individual costs proposed by the offeror against
  - A. Actual costs previously incurred by the same offeror
  - B. Previous cost estimates from the offeror or from other offerors for the same or similar items
  - C. Other cost estimates received in response to the same request
  - D. Independent Cost Estimates developed by technical personnel
  - E. Forecasts of planned expenditures
- E. A Cost Analysis must ensure that the costs submitted are in accordance with all relevant Federal, State, and local regulations
- F. A Cost Analysis should include a pre-negotiation position for the City
- G. A written record of a Cost Analysis shall be retained in the Procurement file

## **5. Procedure for determining required FTA Clauses**

In order to ensure that all procurements by the transit division that are funded in whole or in part by funds provided by the FTA, the Transit Operations Supervisor and the Purchasing Manager shall both have responsibility to ensure that all required and relevant FTA clauses and certifications are included on each procurement.

- A. In order to ensure that the City has the most up to date list of all applicable Federal clauses and certifications the City shall utilize the Procurement Pro web-based application provided by the Nation Rural Transit Assistance Program, a program of the Federal Transit Administration administered by the Neponset Valley TMA, as its primary source of clauses and certifications and their applicability
- B. The Procurement Pro application has a list that the National RTAP takes reasonable measures to ensure the quality of the information that is available through the web-based application. As such, it will not be the only source used to ensure that all required and relevant FTA clauses and certifications are included.
- C. As it is not the policy of the City to use FTA funds for small purchases, the City shall include every FTA clause and certification on every procurement in order to ensure that no relevant clause or certification shall be omitted. As the city continues to procure goods and services in a rapidly changing global economy it is best to include every clause in every procurement the city funds with FTA funds rather than attempt to identify which clauses and certifications may not be needed.

## **6. City of Davenport/CitiBus Protest Procedures for Federally Funded Purchases**

- A. **PROTEST POLICY AND PROCEDURES.** It is the policy of the City of Davenport/CitiBus that it is responsible for resolving all Pre-Bid, Pre-Award and Post-Award Procurement Protest disputes arising out of third-party procurements using good administrative practices and sound business judgment. It is the City of Davenport/CitiBus' intention that its procurement process provides for fair and open competition in compliance with federal and state laws and the City of Davenport policies.

The City of Davenport/CitiBus has established these Pre-Bid, Pre-Award and Post-Award Procurement Protest Policy and Procedures so that all procurement protests/disputes are filed, processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.IF) Third Party Contracting Guidance, dated November 1,2008, which are on file at the City of Davenport and the CitiBus Offices and available upon request.

### **B. APPLICABILITY**

This regulation is applicable to all the City of Davenport/CitiBus employees. This regulation is



applicable to any Interested Party as defined herein who has a protest/dispute against the City of Davenport/CitiBus in the Pre-Bid, Pre-Award and Post-Award procurement phase.

### **C. DEFINITIONS**

“Common Grant Rules” refers to the Department of Transportation regulations “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients/subrecipients of Federal assistance including Indian tribal governments.

“Interested Party” means a party that is an actual or prospective Bidder or offeror whose direct economic interest would be affected by the award or failure to award the third-party contract at issue. A subcontractor does not qualify as an “interested party”.

“Protest” means a formal declaration of disapproval or objection issued by a concerned person, group, or organization that arises during the procurement process. A Protest is a potential Bidder’s or contractor’s remedy for correcting a perceived wrong in the procurement process. See “Types of Protests” below.

“Protester” means a person, group, or organization that files a formal declaration of disapproval or objection. A protester must qualify as an “interested party”.

“Types of Protests” there are three basic types of Protests pursuant to this regulation, based on the time in the procurement cycle when they occur:

1. A pre-bid or solicitation phase Protest is received prior to the bid opening or proposal due date. Pre-bid protests are those based on the content of the initial Notice and/or solicitation published by the City of Davenport requesting bids from vendors or other interested parties.
2. A pre-award Protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
3. A post-award Protest is a protest received after award of a contract. A post-award Protest must be received within five (5) business days of the making of the award. A post-award Protest generally alleges a violation of applicable federal or state law and/or the City of Davenport policy or procedures relative to the seeking, evaluating and/or awarding of the contract.

### **D. STANDARDS**

All Protests must be filed in writing to:

Chief Financial Officer  
City of Davenport  
226 W 4th St.  
Davenport, IA 52801

Additionally a copy must be provided to:

Transit Operations Manager  
CitiBus  
1200 E. 46<sup>th</sup> Street

Davenport, IA 52807

No other locations are acceptable.

A Protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking. The Protester is responsible for adhering to this regulation. A Protester must exhaust all of protest administrative remedies before pursuing a protest with the FTA.

The City of Davenport shall make a determination on the Protest generally within ten (10) working days from receipt of the Protest. The decision will be provided in writing and shall include a response to each substantive issue raised in the Protest. The Chief Financial Officer's decision shall constitute the City of Davenport/CitiBus' final administrative determination.

If the City of Davenport postpones the date of Bid submission because of a Protest or Appeal of the solicitation specifications, addenda, dates or any other issue relating to the procurement, the City of Davenport will notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that a Protest/Appeal had been filed, and the due date for Bid submission shall be postponed until the Chief Financial Officer for the City of Davenport has issued its final Decision.

The Protester may withdraw its Protest or Appeal at any time before a final decision is issued.

Reviews of Protests by FTA are limited to 1) failure to have or follow its protest procedures, or its failure to review a complaint or Protest; or 2) violations of Federal law or regulation.

A Protest Appeal to the FTA must be filed in accordance with the provisions of FTA Circular 4220.IF. Any appeal to the FTA shall be made not later than five (5) working days after a final decision by the City of Davenport or Designee is rendered. Protest appeals should be filed with:

Regional Administrator, Region VII  
Federal Transit Administration  
901 Locust Street, Suite 404  
Kansas City, MO 64106

## **E. THE CITY OF DAVENPORT RESPONSIBILITIES TO FTA**

The City of Davenport will notify FTA when they receive a third-party contract protest to which the FTA Circular (4420.IF) Third Party Contracting Guidance applies, and will keep FTA informed about the status of the Protest including any appeals.

The City of Davenport will provide the following information to FTA:

Subjects: A list of Protests involving third party contracts and potential third-party contracts that:

- ☐ Have a value exceeding \$100,000, or
- ☐ Involve controversial matter, irrespective of amount, or
- ☐ Involve a highly publicized matter, irrespective of amount.

Details: The following information about each Protest:

- ☐ A brief description of the Protest,
- ☐ The basis of disagreement, and
- ☐ If open, how far the Protest has proceeded, or
- ☐ If resolved, the agreement or decision reached, and
- ☐ Whether an appeal has been taken or is likely to be taken.

When and Where: The City of Davenport will provide this information:

- ✓ At the conclusion of the protest review.

Officials to Notify: When the City of Davenport denies a bid Protest, the City of Davenport/CitiBus will provide information regarding the Protest to the FTA Regional Administrator for Region VI.

The City of Davenport will disclose information about any third-party procurement Protest to FTA upon request. FTA reserves the right to require the City of Davenport to provide copies of a particular Protest or all Protests, and any or all related supporting documents, as FTA may deem necessary.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

## APPENDIX B

### **Special Provisions**

#### **American Recovery and Reinvestment Act of 2009**

The following provisions pertain only to procurement transactions paid with Capital Fund Recovery Grants (CFRGs) funding under the American Recovery and Reinvestment Act of 2009 (ARRA).

**Origin of Manufactured Products.** All products (supplies, materials and equipment) secured under individual procurement transactions exceeding \$100,000 must be manufactured in America. The Authority will retain on file evidence demonstrating compliance with this provision.

**Inapplicability of State and local laws.** State and local laws do not apply to procurement transactions under this section.

**Use of the Non-Competitive Method of Procurement.** The need to expend grant funds is considered a public exigency by HUD; and the Authority may use this declaration as the basis for using the non-competitive proposals method of procurement in accordance with the standards set forth under this policy.

**Eligibility of Expenses.** The Authority may not sue grant funds to support housing operations. Prohibited purchases include, but are not necessarily limited to: Management improvements, including training, travel, salary costs, maintenance programs, occupancy programs, social services, consulting services (other than architectural, engineering and other types of services related to physical improvements); office equipment and furniture; and maintenance equipment.

#### **THIRD PARTY CONTRACTING**

Circular #FTA C 4220.1F

**Federal Transit Administration Provision.** This circular provides contracting for recipients of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts). This revision incorporates the new procurement provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFEETEA-LU), and includes the most current available guidance for the Federal public transportation program as of the date of date of publication.

#### **BUY AMERICA**

For rolling stock, steel, iron, or manufactured products Procurement and Purchases \$100,000 and above using FTA funds, the City of Davenport will include all Buy America certifications, reports, and forms.

## APPENDIX C

### *Davenport Municipal Code*

#### **Chapter 2.12 DEPARTMENT OF FINANCE**

##### **2.12.010. Created. [New]**

There is created in and for the City, the department of finance.

##### **2.12.020. Purposes. [New]**

The department of finance shall be responsible for budget preparation and monitoring, collection and disbursement of all City monies, investments, accounting, financial reporting, purchasing, and other related activities.

##### **2.12.030. Director — Office created. [New]**

There is created the office of director of finance. The City Administrator shall appoint a qualified individual to be the director of finance.

##### **2.12.040. Director — Salary. [New]**

The director of finance shall receive as compensation such salary as the City Administrator shall from time to time determine, subject to the budgetary approval by the City Council.

##### **2.12.050. Director — Duties. [Ord. 2006-413 § 1; New]**

Subject to the policy directives of the City Administrator, the director of finance or his/ her designee shall:

- A. Supervise and direct all employees of the department.
- B. Advise on all matters affecting the financial condition of the City when requested to do so.
- C. Collect and receive all City revenue from all sources.
- D. Keep in proper books, in double entry, the accounts between the City and all officers, persons and bodies corporate, who may have the collection or receipt of any money for the City.
- E. Make all City payments based upon adequate documentation.
- F. Keep a register of all City payments, specifying the date paid and amount and out of what fund payable.
- G. Receive and preserve in his/her office all account books, vouchers, documents and papers relating to the accounts and contracts of the City, its revenues, debt and fiscal affairs, whether between the City and any officer thereof, or between the City and any person or body corporate.
- H. Assist in developing and administering City capital and operating budgets.
- I. Invest all monies which are not needed for immediate payment.
- J. Prepare and implement purchasing regulations as outlined in Sections 2.12.060 through 2.12.240.
- K. Develop operating policies with the approval of the City Administrator which will ensure the optimum utilization of the RiverCenter and Adler Theatre by the widest possible range of users and uses to respond to community needs and demands.
- L. Administer and operate the RiverCenter and Adler Theatre and its programs.
- M. Develop a program to foster the development of financial and other resources to support the short and long term needs of the RiverCenter and Adler Theatre and its programs. Said program shall be submitted to the board and City Administrator.
- N. Develop programs which contribute to the economic base of the community by encouraging business use of the RiverCenter and Adler Theatre.
- O. Develop a schedule of fees for special building services, equipment, special building features, rental rates, admissions, and concessions subject to approval of the advisory board.
- P. Develop programs to promote and develop the convention and visitors business within the Quad Cities.

Q. Execute contracts and agreements for the use, operation and maintenance of the RiverCenter and Adler Theatre. Contracts and agreements for the use of the facility may be signed by the director, with approval by City Administrator.

R. Serve as secretary to the RiverCenter and Adler Theatre advisory board and provide the City Administrator, Council and the board such information about the care, maintenance and operation of the RiverCenter/Adler Theatre as may be requested.

S. Perform other duties as the City Administrator may require.

**2.12.060. Terms. [Ord. 2005-292 § 1 (part); New; Ord. 80-1008 § 1 (part); prior code § 2-188]**

For the purpose of this chapter, the words set out in this section shall have the following meanings:

A. "Agency" and "using agency" mean any of the departments, offices or other organizational units of the City, or any special district whose funds are appropriated by the City Council.

B. "Finance director" means the finance director or designee.

C. "Purchasing" means the procurement and acquisition of supplies, materials, equipment and/or contractual services necessary and related to the operation of City business.

D. "Supplies," "materials," and "equipment" mean any and all articles or items which shall be furnished to or used by any agency, including any and all printing, binding, or publication of stationery, forms, laws, journals and reports.

E. "Vendor" and "contractor" are used interchangeably.

**2.12.070. Purchasing provisions. [Ord. 2017-92 § 1; Ord. 2015-117 § 1; Ord. 2015-33 § 1; Ord. 2011-01 §§ 1, 2; Ord. 2005-292 § 1 (part); New; Ord. 80-1008 § 1 (part); prior code § 2-189]**

A. Approval Authority.

1. There must exist authorized budget appropriation.

2. For purchases of \$5,000 or less, the approval of the director of the requesting agency or designee.

3. For purchases in excess of \$5,000 but not exceeding \$25,000, the approval of the finance director. However, the City Administrator is not subject to this provision.

4. For purchases in excess of \$25,000 but not exceeding \$50,000, the approval of the City Administrator or designee.

5. Purchases exceeding \$50,000 require City Council approval.

6. For change orders to capital projects of \$50,000 or less, the approval of the project manager.

7. For change orders to capital projects when 50% or less of budgeted project funds remain, the approval of the capital improvement program manager or City engineer.

8. For change orders to capital projects not exceeding \$15,000, the approval of the public works director.

9. For change orders to capital projects not exceeding \$25,000, the approval of the City Administrator.

10. For change orders to capital projects exceeding \$50,000, the approval of the City Council.

B. Finance Information Only Report. Purchases in excess of \$10,000 but not more than \$50,000 shall be placed upon the committee-of-the-whole agenda for informational purposes.

C. Competitive Bids.

1. Wherever required by state or federal law, all purchases and contracts for supplies, materials, equipment, public improvements, and contractual services shall be on an equal and competitive basis.

2. All other purchases and contracts may follow the procedure, which in the judgement of the finance director, will result in the best value to the City.

3. All competitively bid acquisitions of purchases are to be based on the lowest responsible bidder in accordance with Section 2.12.170 below.

**2.12.080. Purchasing — Administrative procedures. [Ord. 2005-292 § 1 (part); New; Ord. 80-1008 § 1 (part); prior code § 2-190]**

In an effort to insure effective purchasing procedures and operations, the finance director shall establish a purchasing manual setting forth administrative procedures. A copy of the purchasing manual shall be furnished to all agencies of the City, and shall be available for public inspection in the office of the City Clerk and purchasing office during regular business hours. The procedures should provide for the following:

- A. The use of standard specifications wherever applicable;
- B. The transferring between agencies of supplies, materials, and equipment defined as surplus or no longer of use to the holding agency;
- C. The establishment of an inventory system defining the condition, value, and location of all City property and further determining the disposition of property classified as surplus, obsolete and/or unused;
- D. Bid requirements and specification standards; proper handling, custody, safeguarding, and disposition of bids (including the necessity of possible rejection and advertising) for performance reliability, and the criteria for determining a lowest bidder.
- E. Receiving and inspection criteria for purchases;
- F. Acquisition or purchases within the provisions of this chapter and state law, including requisitions, specifications, ordering, emergency purchases criteria, and post audit;
- G. Control and safeguarding of supplies, materials, and equipment;
- H. Purchasing of patented or proprietary articles;
- I. General guidelines for determining the purchasing process to be followed and criteria for use in evaluating proposals.
- J. Such matters as the finance director may deem necessary to give effect to provisions of this chapter and any amendments thereto.

**2.12.090. Duty of director of finance. [Ord. 2005-292 § 1 (part)]**

The finance director has charge of the procurement and disposition of all equipment, materials, supplies and independent contractors' services for use in or used in the City service.

The finance director is responsible for the activities of the purchasing division. The procurement and disposition of all equipment, materials, supplies, and independent contractors' services for use in City service shall be conducted by the purchasing division, except those contracts for construction of public improvements included in the capital improvements program and professional service agreements necessary for the implementation and construction of public improvements included in the capital improvements program which shall be exempt from this section and shall be in accordance with state law under the direction of the City engineer or designee and professional service agreements for attorneys, which shall be under the direction of the Corporation Counsel. Purchases by the levee commission, library, housing rehabilitation division, and civil rights commission also are not conducted by the purchasing division.

**2.12.100. Preference for state products and labor. [Ord. 2005-292 § 1 (part)]**

The requirement of Iowa Code § 73.1 et seq. relating to preference for state products and labor shall be observed by all City officers and employees with respect to the purchase or use of products and provisions grown and coal produced within the state.

**2.12.110. Preference for local goods and services. [Ord. 2005-292 § 1 (part)]**

A. In recognition that businesses may pay higher property taxes due to their location within the corporate limits and that such taxes may increase the cost of providing goods and services in comparison to businesses located outside the corporate limits and to encourage businesses to locate and remain in the City through the provision of a preference to local businesses in the awarding of City contracts governed by this chapter, preference may be given to a responsive bid from a business located within the corporate limits or that proposes a product

substantially manufactured within the City over an acceptable low bid submitted by a business located outside of the corporate limits or bid not including a product substantially manufactured within the City, where the City bidder's bid exceeds the acceptable low bid by no more than 1%.

"Substantially manufactured" means more than a de minimis portion of the assemblage or production in the judgment of the purchasing division. This preference is applicable only to goods and services purchased without the assistance of federal, state or county grants or funds or pursuant to the competitive bidding laws of the state.

B. A business shall be determined to be within the corporate limits of the City by the physical and economic relationship to the City determined by the payment of City property taxes on a plant or office or the payment of rent to a landlord paying City property taxes on such plant or office for not less than one year.

#### **2.12.120. Generic requests for bids. [Ord. 2005-292 § 1 (part)]**

Whenever feasible, requests made for bids and proposals for materials, products, supplies, provisions and other needed articles may be made in general terms and by general specifications and not by brand, trade name or other individual mark.

#### **2.12.130. Contracts exempt from competitive bidding. [Ord. 2015-33 § 2; Ord. 2005-292 § 1 (part)]**

When not otherwise required by law, the following shall not be subject to the competitive bidding requirements of this chapter unless otherwise determined by the finance director that competitive bidding is in the public interest:

A. Contracts which by their nature are not adapted to award by competitive bidding, including but not limited to contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part, and contracts for the disposal of special or hazardous waste materials, where the charge for services cannot be calculated until an analysis of the waste is completed.

B. Contracts for Utility Services.

C. Contracts for the repair of equipment and machinery or for repair parts, when required repair parts are available only from a single factory source and are sold through a single area-wide distributor, and competitive bids for such repairs are thus not prospectively obtainable, and the finance director approves the process.

D. Contracts for the purchase of goods or services that are of such a nature that they are the only goods or services which will fit and comply with the required use, or are an integral part of a total system so as to be uniquely compatible with existing City needs, materials or equipment to be cost effective, and the finance director approves the process.

E. Contracts for the purchase of goods or services through which non-profit associations, established to aid or assist governmental bodies or other governmental agencies, have secured special rates or provisions for the purchase of goods or services for the benefit of governmental bodies or agencies.

F. Contracts for goods or services procured through a cooperative chapter 28E agreement that were procured by a governmental entity participating in said 28E agreement, provided that the finance director determines that said entity procured the goods or services pursuant to competitive procurement procedures substantially equivalent to those set forth in this division. This provision also applies to purchases through the Bi-State Regional Commission.

G. Contracts for the purchase of goods, services, or construction involving amounts of \$50,000 or less.

H. Any procurement from any federal, state, or local government unit or agency thereof surplus machinery, motor vehicles, materials, supplies, commodities, or equipment as may be made available through the operation of any legislation heretofore or hereafter enacted.

I. Any procurement of machinery, motor vehicles, materials, supplies, commodities, equipment or services from contracts established by the state of Iowa Department of General Services or Department of Transportation pursuant to procedures established by Iowa Code Chapter 18 and rules and regulations promulgated thereunder.

J. Regular or temporary employment contracts or hiring in the municipal service, whether with respect to the classified service or otherwise.



K. Any procurement from any federal, state, or local government unit or agency thereof, without conforming to the competitive requirements of this chapter, such machinery, motor vehicles, materials, supplies, commodities, equipment or services as are authorized by the finance director, provided that the purchasing division determines that such machinery, motor vehicles, materials, supplies, commodities, equipment or services were competitively procured by such unit or agency pursuant to competitive procurement procedures substantially equivalent to those set forth in this chapter, and can be purchased without mark-up from such other federal, state, or local government unit or agency.

L. Procurement of equipment pursuant under contracts that have been competitively established through the Western States Contracting Alliance and other cooperative group contracting consortiums for state government departments, institutions, agencies and political subdivisions, without conforming to the competitive bidding requirements of this division.

M. Where service or parts must be obtained from original equipment contractor in order to maintain equipment operation and warranty.

N. The City Council may on a case by case basis, upon the recommendation of the finance director and for good cause shown, exempt contracts for the provision of goods and/or services from the competitive bidding requirements not otherwise exempted by this section.

#### **2.12.140. Public or operating emergencies. [Ord. 2019-193; Ord. 2005-292]**

A. Public Emergencies: The Mayor may declare a public emergency by issuance of a proclamation. Upon issuance of the proclamation the provisions of this chapter are suspended until the Mayor or City Council take action to declare an end to the emergency. During the emergency, the finance director may procure by purchase or lease such goods and services as are deemed necessary by him or her for the City's emergency response effort. Such emergency procurement of goods or services may be made in the open market without filing a requisition or estimate therefor, and without advertisement therefor, for immediate delivery or furnishing. A full written account of all emergency procurements made during such emergency, together with a requisition for the materials, supplies, equipment or services required therefor, shall be submitted to or provided by the finance director within 30 days after their procurement and shall be open to public inspection for a period of at least one year subsequent to the date of the emergency purchases. The finance director shall, within three months of the conclusion of such emergency, formally communicate the emergency expenditures in a full written account to the City Council.

B. Operating Emergencies: The finance director may purchase or may authorize a purchasing agent in writing or any department or any board or commission of the City to purchase, in the open market without filing a requisition or estimate therefor and without advertisement, any supplies, materials or equipment, or services that could not have been reasonably foreseen or anticipated, for immediate delivery or furnishing to meet bona fide operating emergencies if the amount thereof is not in excess of \$100,000. A full written account of any such operating emergency, together with a requisition for the materials, supplies or equipment required therefor, shall be submitted immediately to the finance director and shall be open to public inspection for a period of at least one year subsequent to the date of the emergency purchases. The finance director, at the next immediate Council meeting, shall formally communicate the emergency expenditure in a full written account to the City Council. This exercise of the authority invested in finance director in respect to purchases to meet such bona fide operating emergencies shall not be dependent upon the Mayor issuing an emergency proclamation.

C. In any emergency event, the finance director shall submit by resolution for City Council ratification any single expenditure of \$100,000 or more.

D. In addition, the foregoing subsections should not be construed to prohibit the City from using an after-the-fact ratification process.

#### **2.12.150. Collusion among bidders. [Ord. 2005-292 § 1 (part)]**

Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise shall render the bids of such bidders void. With respect to bids in excess of \$25,000, each bidder shall accompany his or her bid with a sworn statement or shall otherwise swear or affirm that he or she has not been a party to any such agreement. Any disclosure in advance of the opening of the bids of the terms of the bids submitted in response to an advertisement made or permitted by the finance director shall render the proceedings void and shall require readvertisement and reward.

**2.12.160. Award of contracts. [Ord. 2017-92 § 2; Ord. 2005-292 § 1 (part)]**

A. No purchase orders; no contracts of whatever nature for independent contractors' services or work; any purchase, lease or sale of personal property, materials, equipment or supplies; or the granting of any concession involving amounts up to \$50,000 shall be awarded unless the same is authorized as provided in Section 2.12.070.

B. No purchase orders; no contracts of whatever nature for independent contractors' services or work; any purchases, lease or sale of personal property, materials, equipment or supplies; or the granting of any concession involving amounts in excess of \$50,000, shall be awarded unless the same is authorized by the City Council.

C. An official copy of each awarded purchase order or contract, together with all necessary attachments thereto, shall be retained by the finance director in an appropriate file open to the public for such period of time after completion or termination of contract during which action against the City might ensue under applicable laws of limitation. After such period as elapsed such purchase orders, contracts and attachments may be destroyed.

**2.12.170. Determining responsibility of bidders. [Ord. 2005-292 § 1 (part)]**

In determining responsibility of bidders pursuant to this chapter, the City may take into account the capacity or skill of the bidder to perform the contract or provide the service required; whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference; the experience of the bidder; the quality of performance of previous contracts or services; the previous and current compliance by the bidder with laws and ordinances relating to bidding or the contract or service or the purchasing process; the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services; the quality, availability of the supplies, or contractual services to the particular use required; the ability of the bidder to provide future maintenance and service for the use of the subject to the contract; quality of the product, goods or services proposed; and the number and scope of conditions attached to the bid.

**2.12.180. No bids within budgeted amount. [Ord. 2015-33 § 3; Ord. 2005-292 § 1 (part)]**

If, after competitive bidding procedures have been completed pursuant to this chapter, the finance director determines that no bid received for the purchase of equipment, materials, construction, supplies or services is within the amount budgeted for the project or varies significantly from estimated costs. City personnel may reject all bids and accept new bids and quotes and may negotiate with vendors for the purchase of such equipment, materials, construction, supplies or services so long as the negotiations do not result in a material change in the scope of the project. If a material change is required to bring the bid within budget then the project must be rebid.

**2.12.190. Rejection of bids. [Ord. 2005-292 § 1 (part)]**

Any and all bids received in response to an advertisement may be rejected by the City if the bidder is not deemed responsive or responsible or the character or quality of the services, supplies, materials or equipment does not conform to requirements or if the specifications or requirements submitted by the City to the bidder are determined to be faulty or incorrect or if the public interest may otherwise be served thereby. If the lowest bid after formal advertisement is rejected because it is not the lowest responsible bid, the person or body

rejecting it shall immediately state in writing the precise reasons for rejection and file the same in the office of the purchasing agent. Bids may be rejected by the finance director or Council.

**2.12.200. Performance bond. [Ord. 2005-292 § 1 (part)]**

A bond, with good and sufficient sureties, in an amount deemed adequate, not only to insure performance of the contract in the time and manner prescribed in the contract, but also to save indemnify, and keep harmless the City against all loss, damages, claims, liabilities, judgments, costs, and expenses which may in any way accrue against the City in consequence of the granting of the contract or which may in any way result therefrom may be required of each bidder upon contracts involving amounts in excess of \$5,000 when, in the opinion of the finance director, the public interest will be served thereby.

**2.12.210. Assignment of contract. [Ord. 2005-292 § 1 (part)]**

No contract awarded shall be assignable by the successful bidder without the written consent of the person or body authorized to award the contract. In no event shall a contract or any part thereof be assigned to a bidder who has been declared not to be a responsible bidder for the particular contract.

**2.12.220. Change orders under \$50,000. [Ord. 2017-92 § 3; Ord. 2005-292 § 1 (part)]**

The City Administrator or designee may authorize a change order for an additional unit of material, equipment or service under \$50,000 to an existing or recent purchase order previously approved by the Council, if the circumstances requiring the change order were unforeseen or unanticipated, the purchasing agent certifies that the lowest responsible bidder agrees to hold the same price per unit open to allow the City to make the additional purchase, and the change order does not materially change the scope of the project.

**2.12.230. Disqualification or other safeguards. [Ord. 2007-500 § 1; Ord. 2005-292 § 1 (part)]**

A. No contract or subcontract awarded pursuant to the provisions of this chapter shall be let to any vendor which is disqualified as hereinafter set out or is managed, controlled or more than 50% owned by a person or entity so disqualified. A vendor which is disqualified or is managed, controlled or more than 50% owned by a person or entity that is disqualified shall not act as subcontractor on any such contract.

B. When the finance director, in the finance director's discretion, shall determine that a review should be undertaken regarding the suitability of a contractor or subcontractor for performance of future contracts with the City, the finance director shall review the performance of such contractor or subcontractor in performing prior contracts with the City. In determining whether a contractor or subcontractor should be disqualified from bidding on or receiving any City contracts for a period of time or be subject to other safeguards, the following may be considered.

1. Whether the contractor or subcontractor incorporated materials into the work which were not in accordance with or equal to the materials specified in the contract.
2. Whether the contractor or subcontractor performed any work on the contract without the insurance required by the contract.
3. Whether the contractor or subcontractor completed the work in a timely manner.
4. Whether the contractor or subcontractor obtained all permits required by law, and whether the contractor or subcontractor observed all required safety precautions in connection with handling, storage and use of explosives.
5. Whether the contractor or subcontractor concealed substandard work from inspectors.
6. Whether the contractor or subcontractor falsified test results.
7. Whether the contractor or subcontractor repaired all property damaged in the course of doing the work.
8. Whether the contractor or subcontractor paid suppliers.
9. Whether the contractor or subcontractor complied with law relating to equal opportunity in employment or rules governing disadvantaged business enterprises.

10. Whether the contractor or subcontractor disposed of hazardous or regulated waste only in those locations and in the manner which have been approved as provided by law and, if applicable, in the contract.

11. Whether the contractor or subcontractor has paid applicable taxes, fines, judgments, license fees, or special assessment due to the City.

12. Whether the contractor or subcontractor consistently fails to comply with the requirements of the bidding process.

13. Whether the contractor or subcontractor permits a subcontractor or any employee to violate any of the requirements listed herein.

14. Whether the contractor or subcontractor receives an unsatisfactory score on the contractor evaluation form.

C. If violations are found or the contractor receives an unsatisfactory evaluation score, the finance director shall determine whether the bidder should be disqualified and the period of such disqualification or whether the bidder should be subject to other safeguards. In making this determination following a review of past performance and current actions of a contractor or subcontractor, the finance director shall consider the seriousness of the violation, whether the violation was intentional, and whether the contractor has been previously disqualified from contracts with the City. Any period of disqualification under this section shall not exceed five years.

D. Failure to disqualify a contractor or subcontractor under the provisions of this section shall not stop the City from determining that a bidder is not the "lowest responsible bidder" under the criteria set forth in Section 2.12.170.

**2.12.235. Use of DBEs/TSBs disclosure required. [Ord. 2009-434 § 1]**

All successful bidders must abide by the provisions of DBE/TSB policy as a basis for the overall bid unless otherwise released from this obligation in a waiver issued by the finance director.

**2.12.240. Lease or sale of City property. [Ord. 2005-292 § 1 (part)]**

All sales or leases of City property are subject to the finance director's review and approval, unless the finance director states otherwise in writing.

**2.12.250. (Reserved)<sup>1</sup> [Ord. 2006-413; repealed by Ord. 2017-93]**

**2.12.260. (Reserved)<sup>2</sup> [Ord. 2006-413; Ord. 2015-117; repealed by Ord. 2017-93]**

**2.12.270. Financial Disclosure. [Added 6-8-2022 by Ord. No. 2022-285]**

Financial interest disclosure regulations are outlined in City of Davenport Administrative Policy 4.10.

1. Editor's Note: Former Section 2.12.250 creating the River Center Advisory Board was repealed.

2. Editor's Note: Former Section 2.12.260 pertaining to membership and duties of the River Center/Adler Theater Advisory Board was repealed.

## APPENDIX D

### CITY OF DAVENPORT IOWA P-CARD POLICY

The requirements contained in this policy are designed to ensure appropriate use of the City of Davenport's P-Cards. It is the cardholders' responsibility to read, understand, and carefully follow this policy. The success and continuation of the purchasing card program depends upon everyone's participation and cooperation in using P-Cards as intended. Violation by any employee involved in the purchasing card process may result in re-training, suspension of P-Card privileges, an employee's P-Card privileges being revoked, required reimbursement, and/or disciplinary action.

#### **Procurement Policies**

Regardless of the payment method, all goods and services must be purchased in accordance with the City of Davenport purchasing policies and procedures, and all parties involved in the process should know, understand, and abide by:

- City of Davenport Purchasing Policy and Procedures.
- State of Iowa Code of Ethics 68B.22 and NIGP Code of Ethics pertaining to procurement conduct and conflicts of interest in the event that purchases might result in an employee's financial gain.
- City of Davenport Travel Policies.

#### **Purpose**

The purpose of the P-Card Policy and procedures is to accomplish the following:

- To provide an efficient method of purchasing and making point of sale payment for goods.
- To provide an efficient method of arranging travel and lodging accommodations.
- To ensure P-Card purchases are made in accordance with City budget, ordinances, policies, and procedures

#### **Limits and Restrictions**

Purchasing Cards add convenience to the procurement process; however, they may NOT be used:

- To avoid or bypass City procurement policies and procedures.
- For personal use or entertainment purposes.
- For alcoholic beverages OR tobacco products.
- Any other purchases prohibited by the City's Purchasing Policy and Procedures manual.

Splitting a transaction to stay within the dollar limit is prohibited. Any cardholder that is found to engage in split purchases to circumvent single purchase limits will be subject to any of the violation actions described in this policy. This P-Card program allows the cardholder, with proper identification, to make all approved purchases for products or services under \$3,000.00 directly from suppliers and vendors without the issuance of a purchase order or invoice. It is the Finance Director's discretion to set or change limits. In order to prevent double payment to vendors, employees making a purchase through the P-Card program do not enter these payments into Requisition Entry in MUNIS. Employees must also check their budgets prior to making P-Card purchases in order to ensure that sufficient available budget exists. Employees may contact the Purchasing Division Manager if questions arise regarding this paragraph. The P-Card must be signed by the named cardholder. Departmental P-Cards require that the employee using the card show his or her City identification badge.

Proper security of your P-Card should be maintained at all times.

The P-Card is for official City business only. The purchase of non-business personal goods or services is prohibited. The cardholder will be held personally liable for any personal charges.

The card may also be used to arrange business-related travel, lodging, training expenses and fuel purchases while traveling. **Food purchases during travel are not permitted, when the City is issuing per diem for food costs directly to the employee.** When gasoline is purchased for a City vehicle while traveling, the mileage and vehicle number must be indicated on the receipt. A copy of this receipt should be forwarded to Fleet Maintenance by the cardholder.

The purchase of tobacco products, alcohol, controlled substances or obtaining a cash advance is strictly prohibited.

Any rewards, cash, or cash-like value incentives earned because of City purchases are the property of the City and may

not be used for personal gain. Examples of such incentives include, but are not limited to, gift cards, two-for-one purchases, and spend rewards. Employees encountering a reward or incentive consistent with this paragraph shall promptly notify the Purchasing Division Manager.

### **Lost or Stolen P-Cards**

If a card is lost or stolen, immediately contact the Purchasing Division at 563-888-2156. Verbal reports of a lost or stolen card must be accompanied by written memorandum or email to the Purchasing Division within 24 hours. The cardholder can also contact the US Bank at 1-800-344-5696. The cardholder may need to know the card number and phone number associated with the card.

### **Taxes**

The City is exempt from paying Iowa Sales Tax on purchases made in Iowa. This exempt status is indicated on each P-Card. The City may not be exempt from paying applicable sales tax in other states.

It is the cardholder's responsibility to inform suppliers/vendors of the City's tax-exempt status at the time of purchase. If materials are ordered by phone, inform the vendor at that time of the City's tax exempt status. If sales tax has been charged on the receipt, the cardholder should contact the vendor for a credit back to the P-Card. Cash refunds are strictly prohibited.

### **Recordkeeping / Reconciliation of Receipts**

Cardholders are responsible for providing itemized purchase documentation for all purchases made through the P-Card program. Itemized sales receipts must be obtained at the time of purchase. It is the responsibility of the cardholder to retain transaction receipts for all transactions and to ensure that the description on the sales receipt is legible and that the receipt clearly describes the purchase.

It must be clear as to the business purpose for the expense. If the City business purpose is not evident from the invoice or receipt as to the justification of the expenditure, it must be documented. For example, if the purchase is for a class or event, include the agenda or press release for the event.

### **Disputes / Erroneous Charges**

It is the responsibility of the cardholder to document and resolve disputes and erroneous charges directly with the vendor. In most cases, disputes can be resolved in this manner. If a dispute cannot be resolved, contact the Purchasing Division for assistance.

### **Card Termination**

Violation of these P-Card policies, misuse of the procurement card, or failure to submit procurement card reconciliation and documentation within 60 days of the initial MUNIS statement will result in termination of the purchasing card. The following communication will be provided before placing a card on temporary termination for failure to timely reconcile MUNIS statements:

- 30 day notice
- 45 day notice
- 60 day termination notice

The card will be reactivated once all delinquent MUNIS statements are current.

All statements from previous fiscal year must be reconciled by July 31<sup>st</sup>. Failure to comply with the fiscal year-end deadline will result in a temporary termination of the purchasing card.

When a cardholder terminates employment with the City of Davenport, the supervisor has the responsibility to reclaim the P-Card and return it to the Finance department. The supervisor is also responsible for reconciling the final charges and submitting the proper receipts/documentation to Finance.

## APPENDIX E

### City of Davenport Administrative Policy

#### Policy Number 4.10

**Subject |** Financial Interest Disclosure

**Effective Date |** April 1, 2022



#### General Policy:

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Employees and elected or appointed officials are required to adhere to the City of Davenport's Financial Interest Disclosure Policy and submit all required documentation.

#### Scope:

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All employees, elected officials, and appointed officials.

#### Definitions:

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"Immediate Family" means spouse, un-emancipated children or any person who dwells within discloser's household and contributes to the economics of the household.

#### Provisions:

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1. In compliance with Iowa Code, employees, elected officials, and appointed officials working for or representing the City of Davenport must disclose direct and indirect financial interests in contracts and businesses (see FID form for examples).
  - a. An employee must complete and submit a Financial Interest Disclosure Form (hereafter FID Form) to the Human Resources Department before, or at, the time of hire with the City of Davenport.
  - i. Whenever there is a change to the employee's financial interests while employed by the City, a new FID form must

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ISSUED BY | Alison M. Fleming, Director of Human Resources

APPROVED BY | Corrin B. Spiegel, City Administrator

be submitted to the Human Resources Department within thirty (30) calendar days of such change.

- b. An elected or appointed official must complete and submit an FID Form to the Mayor's Office before assuming the duties of the elected or appointed office.
  - i. Whenever there is a change to the elected or appointed official's financial interests while serving in the office to which they have been elected or appointed, a new FID form must be submitted to the Mayor's Office within thirty (30) calendar days of such change.
- 2. If the review or update of the employee's or official's form is requested by the City, the employee or official must acknowledge receipt of the request and must respond within thirty (30) calendar days of such acknowledgment with the requested information.
- 3. Violation of this policy by employees may result in discipline, up to and including termination of employment. Violation of this policy by elected or appointed officials may result in removal.

ISSUED BY	Alison M. Fleming, Director of Human Resources	<i>af</i>
APPROVED BY	Corrin B. Spiegel, City Administrator	<i>cs</i>



APPENDIX F



ADDITIONAL BID INFORMATION

GENERAL CONTRACTOR QUALITY ASSURANCE QUESTIONNAIRE

**Non-Horizontal Projects \$1 Million Dollars or More**

(Horizontal = Bridges, Roads, Culverts and related infrastructure to the project including Sewer)

Iowa Code §26.9 requires that contracts for public improvements be awarded to the "lowest responsive, responsible bidder," and also recognizes that a governmental entity may obtain information from the lowest responsive bidder to determine bidder's responsibility relating to the bidder's experience, number of employees, and ability to finance the cost of the public improvement, and in accordance with Iowa law allowing public entities to consider factors other than price in determining who is the lowest responsive bidder; the City of Davenport does hereby provide the following Questionnaire to the bidder to whom award of a Contract is under consideration ("Contractor") submitting bids for work on the ("Project"). The fully completed Questionnaire, with attachments, shall be submitted to the City of Davenport by the bid-close date. Contractors who do not complete the following questionnaire will be deemed to be non-responsive or non-responsible.

1. Full name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

2. All other names under which Contractor has operated in the past five (5) years:

\_\_\_\_\_  
\_\_\_\_\_

3. Provide Contractors' Registration Number and full names of Registration Holders as per Iowa Construction Contractor Registration requirements:

\_\_\_\_\_  
\_\_\_\_\_

Contractor Registration Expiration Date \_\_\_\_\_

4. Has Registration ever been suspended or revoked in any jurisdiction?

☐ Yes  
☐ No

If "yes", provide information regarding suspension/revocation and attach all relevant documents

- 5.. Within the past five (5) years, has Contractor been debarred by any federal, state or local governmental entity from bidding on projects?

☐ Yes  
☐ No

If "yes", provide information related to debarment.

6. On a separate sheet, list construction projects in value in excess of \$5 million dollars that Contractor has in progress, giving the name of the project, owner, architect, contract amount, key Contractor personnel, percent complete and scheduled completion date.
7. On a separate sheet, list the major projects Contractor has completed in the past three (3) years, giving the name of the project, owner, architect, contract amount, Officer in Charge, Project Manager, Project Superintendent and any other key Contractor personnel, date of completion and percentage of the total project performed by your own employees.
8. On a separate sheet, identify the individuals Contractor intends to be the Officer in Charge, Project Manager, Project Superintendent and any other key personnel on this project. Include a resume and/or recent work history for each identified individual.
9. On a separate sheet, for work Contractor intends to self-perform on the project; specify the level of training and experience Contractors' employees have had. Further indicate whether or not any such training has been in a United States Department of Labor (DOL) certified apprentice program. In the event Contractor intends to utilize apprentice workers on the Project, Contractor must be able to provide, upon Owners' request, documentation that each apprentice worker utilized on the Project is properly registered as participating in a DOL certified apprentice program or substantially equivalent apprenticeship program.
10. On a separate sheet, list the Contractors last five (5) completed projects, and for each, the scheduled completion date and the final completion date, noting any owner approved extensions.
11. Within the past three (3) years, has Contractor defaulted on a contract, or been disqualified, removed or otherwise prevented from bidding on or completing any project.

☐ Yes  
☐ No

If "yes", provide the year of the incident, name, address and telephone number of the owner of the project, project name and location.

12. Has Contractor ever been unable to obtain a bond or been denied a bond?

☐ Yes  
☐ No

If "yes", please provide all relevant details.

13. On a separate sheet, list all surety/bonding companies Contractor has utilized in the past five (5) years.

14. Has Contractor ever declared bankruptcy or been in receivership?

☐ Yes

☐ No

If "yes" please provide all relevant details.

15. Is Contractor currently being investigated for or previously been found to have violated in the past five (5) years any of the following state or federal laws: Iowa Minimum Wage Act; Iowa Non-English Speaking Employees Act; Iowa Child Labor Act; Iowa Labor Commissioner's Right to Inspect Premises, Iowa Compensation Insurance Act; Employment Security Act; Iowa Competition Act; Iowa Income, Corporate and Sales Tax Code; a "willful" violation of the Iowa or Federal Occupational Safety and Health Act; Iowa Employee Registration Requirements; Iowa Hazardous Chemical Risks Act; Iowa Wage Payment Collection Act; Federal Income and Corporate Tax Code; The National Insurance Security Act; The Fair Labor Standards Act:

☐ Yes

☐ No

If "yes" please explain:

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16. Has Contractor ever failed to complete any work awarded to it?

☐ Yes

☐ No

If "yes" provide all relevant details.

17. Are there any judgments, arbitration proceedings or suits pending or outstanding against Contractor or its officers that relate to, arise out of or are in the course of the Contractor's business?

☐ Yes

☐ No

If "yes" provide all relevant details.

18. Has Contractor filed any lawsuit or demanded arbitration with regard to any construction contract within the past five (5) years?

☐ Yes

☐ No

If "yes" provide all relevant details.

19. Has Contractor been found by a court or agency of competent jurisdiction to be delinquent in meeting its obligations under local, state or federal tax laws within the last five (5) years? ("delinquent" shall include, but is not limited to: failure to file, failure to pay or imposition of tax liens)

☐ Yes  
☐ No

20. Contractor affirms that it will retain only subcontractors who can fully comply with the bid specifications, including those that address requirements concerning labor.

☐ Yes  
☐ No

21. Contractor affirms that it will be responsible for ensuring that each subcontractor meets quality assurance specifications.

☐ Yes  
☐ No

22. Contractor agrees to submit to the City of Davenport Purchasing Division a list of all intended subcontractors **within 14 calendar days of notification** to the apparent lowest bidder. (In the event Contractor wishes to replace any originally- designated subcontractor, such may only occur with the approval of City of Davenport. Such approval will not be unreasonably withheld)

☐ Yes  
☐ No

23. Contractor attests that it will comply with each of the following:

Iowa's Minimum Wage Law.

☐ Yes  
☐ No

Maintain workers' compensation insurance or be qualified as a self-insurer and provide proof of insurance or ability to self-insure upon request.

☐ Yes  
☐ No

Properly license all Contractor employees with the appropriate licensing authority.

☐ Yes  
☐ No

24. Contractor will make available to City or City's representative, upon City's request, documentation to satisfy the City, in City's sole discretion, that the Contractors' workers utilized on this project are actual employees, with unemployment and workers' compensation coverage, not "leased employees" or independent contractors.

☐ Yes  
☐ No

25. That Contractor will provide with this Questionnaire, the name, address, phone number and name of contact for three (3) entities which will provide references.

☐ Yes

\_\_\_\_ No

26. Contractor will only utilize on-site employees who have completed the Occupational Safety and Health Act (OSHA) 10-hour Construction Industry Training Program.

\_\_\_\_ Yes

\_\_\_\_ No

Provide Contractor's Federal ID Number \_\_\_\_\_

Provide Name and address of Contractor's Registered Agent \_\_\_\_\_

\_\_\_\_\_  
(Please continue to signature page)

[This space left intentionally blank]

I hereby certify, that (1) all of the information provide by me in this Questionnaire is true and correct to the best of my knowledge; (2) I am authorized to sign this Questionnaire on behalf of the Contractor whose name appears in Question #1; (3) if any of the information I have provided herein becomes inaccurate, prior to execution of any Project Contract. I will immediately provide City of Davenport Purchasing Division with updated accurate information in writing; and (4) I hereby authorize any person or entity named herein to provide City of Davenport Purchasing Division with whatever information might be required to verify this Questionnaire.

THIS STATEMENT MUST BE NOTARIZED

NAME OF CONTRACTOR\_\_\_\_\_

BY: \_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Type/Print Name Date

STATE OF IOWA, \_\_\_\_\_ County, ss:

Subscribed and sworn to before me by the said \_\_\_\_\_ on this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Iowa

\_\_\_\_\_  
Contractor Name

## APPENDIX G

### Federal Procurement and Contracting Guidance for Subrecipients Code of Federal Regulations (CFR), Part 200, Sections 200.318- 200.327

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#### **PURPOSE**

The purpose of a procurement policy is to ensure that sound business judgement is utilized in all procurement transactions. That supplies, equipment, construction and services are obtained efficiently and economically, and in compliance with applicable federal and state law, and executive orders, and to ensure that all procurement transactions are conducted in a manner that provides full and open competition. These procedures will ensure that all solicitations incorporate clear and accurate descriptions of the technical requirements for the goods or services being procured. Chapter 26 and Section 331.341 of the Iowa Code must be followed on all applicable purchases. All other appropriate sections of the Iowa Code shall also apply.

#### **FEDERAL PROCUREMENT STANDARDS**

Subrecipients should use this guidance to review their current written procurement policies and procedures to ensure compliance with the federal requirements at 2 CFR, Sections 200.318-200.327. It applies to the procurement of all supplies, equipment, and construction and services that include any federal program funding. 2 CFR references are noted. All other appropriate sections of Iowa Code and Local Code shall also apply. **When federal requirements conflict with local or state requirements, the federal requirement, or most restrictive requirement will be followed.**

#### **§ 200.318 General Procurement Standards**

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is

unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity 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. See also §200.214.

(i) 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 the basis for the contract price.

(j) (1) The non-Federal entity may use a time-and-materials 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.

(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.

(k) 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. [85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

### **§ 200.319 Competition**

(a) 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.

(b) 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
  - (7) Any arbitrary action in the procurement process.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

### **§ 200.320 Methods of procurement to be followed**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

#### ***(1) Micro-purchases -***

- (i) ***Distribution.*** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) ***Micro-purchase awards.*** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for

micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\)](#) and [\(v\)](#) of this section.

(iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](#) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

**(2) Small purchases -**

(i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](#) or [paragraph \(c\)](#) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

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

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) 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.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) 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;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will 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; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

### **§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) 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;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) 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

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs \(b\)\(1\)](#) through [\(5\)](#) of this section.

### **§ 200.322 Domestic preferences for procurements**

(a) 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.

(b) For purposes of this section:

(1) “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.

(2) “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.

### **§ 200.323 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.

### **§ 200.324 Contract cost and price**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must 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. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under [subpart E of this part](#). The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### **§ 200.325 Federal awarding agency or pass-through entity [HSEMD] review**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a

solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in [paragraph \(b\)](#) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### **§ 200.326 Bonding requirements**

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.

#### **§ 200.327 Contract provisions**

Subrecipients that use contractors for work under a federal award must comply with federal laws, including the federal procurement standards which states that non-federal entity contracts must contain the applicable provisions described in the 2 CFR, Part 200, Appendix II. See the quick reference tables below and the full federal contract provisions guide (attached) for guidance on both required and recommended provisions on applying Appendix II Section under 2 CFR Part 200:



Table A: Required Federal Contract Provisions

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included
1	<a href="#">Legal/contractual/administrative remedies for breach of contract</a>	Greater than Simplified Acquisition Threshold (SAT)- \$250,000	No. It is based on NFE's procedures.
2	<a href="#">Termination for cause and convenience</a>	Greater than \$10,000	No. It is based on NFE's procedures.
3	<a href="#">Equal Employment Opportunity</a>	Construction work	Yes. Exact language from 41 C.F.R. § 60-1.4(b) included.
4	Davis-Bacon Act <b>(Not applicable for Public Assistance or Hazard Mitigation Grant Programs)</b>	Construction work	Yes, via reference to required language at 29 C.F.R. § 5.5(a).
5	<a href="#">Copeland "Anti-Kickback" Act</a>	Construction work greater than \$2,000	Yes.
6	<a href="#">Contract Work Hours and Safety Standards Act</a>	Greater than \$100,000 + mechanics or laborers	Yes. Exact language required from 29 C.F.R. § 5.5(b).
7	<a href="#">Rights to inventions made under a contract or agreement</a>	Funding agreement	Yes.
8	<a href="#">Clean Air Act and federal Water Pollution Control Act</a>	Greater than \$150,000	Yes.
9	<a href="#">Debarment and Suspension</a>	Greater than \$25,000	Yes.
10	<a href="#">Byrd Anti-Lobbying Amendment</a>	Greater than \$100,000; and Certification required for all contracts greater than \$100,000	Yes. Clause and certification.
11	<a href="#">Procurement of Recovered Materials</a>	NFE is a state or political subdivision of a state. Work involves the use of materials and the contract is for more than \$10,000.	Yes.
12	<a href="#">Prohibition on Contracting for Covered Telecommunications Equipment or Services</a>	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.
13	<a href="#">Domestic Preferences for Procurements</a>	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.

Table B: Recommended Federal Contract Provisions

	Provision	Applicability	Sample Contract Language Included
1	<a href="#">Access to Records</a>	All	Yes.
2	<a href="#">Contract Changes or Modifications</a>	All	No. It depends on nature of contract and end-item procured.
3	<a href="#">DHS Seal, Logo, and Flags</a>	All	Yes.
4	<a href="#">Compliance with federal Law, Regulations and Executive Orders</a>	All	Yes.
5	<a href="#">No Obligation by Federal Government</a>	All	Yes.
6	<a href="#">Program Fraud and False or Fraudulent Statements or Related Acts</a>	All	Yes.
7	<a href="#">Affirmative Socioeconomic Steps</a>	State entities: all FEMA declarations and awards issued on or after November 12, 2020. Non-state entities: all procurements	Yes.
8	<a href="#">Copyright</a>	All procurements that may involve creation of copyrightable material.	Yes.

In addition to ensuring compliance with 2 CFR, Sections 200.318-200.327, subrecipients are subject to the following sections of 2 CFR Part 200:

#### **§ 200.214 Suspension and debarment**

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. *[Subrecipients must have written documentation from SAM.gov showing a contractor is not on the suspended/debarred list prior to entering into contract with them.]*

#### **§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment**

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies

Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See [Public Law 115-232](#), section 889 for additional information.

(d) See also [§ 200.471](#).

### **Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure**

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” The Act affirms, consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (“the Executive Order”), this Administration’s priority to “use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”

This guidance applies to all Federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations—whether or not funded through IIJA—where funds are appropriated or otherwise made available and used for a project for infrastructure. Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance. The term “non-Federal entity” includes States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations.

#### **References:**

Executive Order 14005 - <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>

Build America, Buy America Act (BABAA) - <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>

FEMA - <https://www.fema.gov/grants/policy-guidance/buy-america>

OMB Memorandum M-22-11 - <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

HSEMD’s major federal grant programs that **ARE** subject to Build America, Buy America Act: Building Resilient Infrastructure and Communities (BRIC, 97.047)  
Emergency Management Performance Grant Program (EMPG, 97.042)  
Flood Mitigation Assistance (FMA, 97.029)



Homeland Security Grant Program (HSGP, 97.067) Nonprofit Security Grant Program (NSGP, 97.008) Pre-Disaster Mitigation (PDM, 97.047)

HSEMD's major federal grant programs that are **NOT** subject to the Build America, Buy America Act: Hazard Mitigation Grant Program (HMGP, 97.039) Public Assistance Grant Program (PA, 97.036)