

**ROSS VALLEY FIRE DEPARTMENT
STAFF REPORT**

For the meeting of June 9, 2021

TO: Ross Valley Fire Board

FROM: Kevin Yeager, Deputy Director Fire

SUBJECT: Authorize the Federally Funded Procurement Policy

RECOMMENDATION

That the Fire Board authorizes the Federally Funded Procurement Policy that outlines the procurement requirements when Federal funds are used for purchasing and contracts.

BACKGROUND

Throughout the years, the Department has received federal funds for services provided under an emergency assistance mutual aid agreement with CalOES and CalFire and, most recently, FEMA due to the Covid-19 pandemic. Receiving Federal funds subjects the Department to adhere to the "federally funded procurement policies." The federal Office of Management and Budget ("OMB") guides the procurement procedures for local agencies that receive federal funds.

In December 2014, OMB issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly referred to as "Uniform Guidance" (2 CFR § 200), to streamline and consolidate government requirements for receiving and using federal grant awards. The Uniform Guidance aims to reduce the administrative burden on award recipients and guard against the risk of waste and misuse of federal funds.

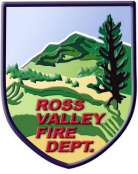
DISCUSSION:

To comply with the OMB's Uniform Guidelines, the Department must adopt a purchasing policy for projects and purchases funded with federal money. This policy outlines the requisite provisions prescribed by the Uniform Guidance. Further, adopting the policy will ensure that the Department continues to be eligible to receive federal grant funds.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

Attachments: Federally Funded Procurement Policy – Attachment #1



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SECTION 1: PURPOSE

The “Federally Funded Procurement Policy” objective is to ensure compliance with all applicable Federal requirements when the Ross Valley Fire Department (Department) expends Federal money. This policy pertains to Federally-funded projects and purchases.

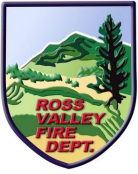
SECTION 2: POLICY

When any provisions of this policy are inconsistent with any other Department’s regulations, the provisions of this policy shall prevail for federally-funded procurements. However, if any provisions of this policy become inconsistent with federal requirements, whether due to a change in federal law or regulations, through judicial precedent, or for any other reason, shall not require the Department to comply with the inconsistent provision.

The Department adheres to the Code of Federal Regulations (CFR)—general procurement standards. As representatives of the Department, all employees shall conduct themselves professionally and ethically, maintaining high integrity and sound judgment standards. Employees are expected to be principled in their business interactions and act in good faith with individuals inside and outside the Department.

SECTION 3: CODE OF CONDUCT

The following code of conduct shall govern the performance, behavior, and actions of the Department, including employees, officers, volunteers, or agents who are engaged in any aspect of federally funded procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts.



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- A. **Contracts:** No employee, officer, volunteer, or agent shall participate in selecting, awarding, or administering a contract supported by a federal award if they have a real or apparent conflict of interest.

- B. **Gratuities:** No employee, officer, volunteer, or agent shall neither solicit nor accept gratuities, favors, gifts, consulting fees, trips, or anything having a monetary value over the gift limitation amount established by the Fair Political Practices Commission from a vendor, potential vendor, family or employees of a vendor, contractor or parties to subcontractors.

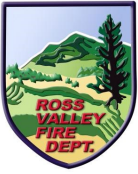
- C. **Violations:** Any violation of the code of conduct by employees, officers, volunteers, or agents who are engaged in any aspect of procurement, as previously stated, could lead to disciplinary measures, up to and including possible termination of employment.

SECTION 4: SOLICITATION PROCEDURES

To avoid unnecessary expenditures and to foster a more excellent economy and efficiency, according to the CFR, the Department shall:

- A. Explore different options such as leasing, purchasing, and consolidating or dividing procurements.

- B. Promote cost-effective use of shared services by entering into state and local intergovernmental agreements or inter-entity agreements appropriate for procurement use of common or shared goods and services.



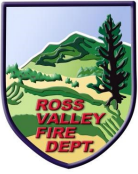
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- C. Procure federal excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- D. Use value engineering clauses in contracts for construction projects of sufficient size 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 an overall lower cost.
- E. Award contracts to responsible vendors performing successfully under the terms and conditions of a proposed procurement.
- F. Maintain records to detail the history of procurement. These records will include but are not limited to
 - o rationale for the method of procurement,
 - o selection of contract type,
 - o contractor selection or rejection, and
 - o the basis for the contract price.

The Department's Administrative Assistant will be the repository for said records and shall maintain them according to the Department's adopted records retention schedule.
- G. Use time and material type contracts only after a determination that no other contract is suitable. Use Time and material type contract when the cost to the Department is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expense, and profit. Each time and material contract will set a ceiling price that the contractor exceeds at its own risk. A higher degree of oversight is required to obtain reasonable assurance that the contractor uses efficient methods and adequate cost controls.



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H. Settle all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. However, these standards do not relieve the Department of any contractual responsibilities under its contracts. Further, the Federal awarding agency will not substitute its judgment for that of the Department's unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

SECTION 5: COMPETITION

According to the CFR, must conduct all procurement transactions to provide complete and open competition. To ensure objective contractor performance and eliminate an unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals will be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:

- placing unreasonable requirements on firms to qualify to do business;
- requiring unnecessary experience and excessive bonding;
- noncompetitive pricing practices between firms or between affiliated companies;
- noncompetitive contracts to consultants that are on retainer contracts;
- organizational conflicts of interest;
- 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
- any arbitrary action in the procurement process.

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed state or local 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



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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.

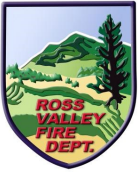
All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of 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 relevant requirements of procurement. The specific features of the named brand which offers must meet must be clearly stated.

Bids and proposals shall identify all the requirements that the offerors must fulfill and all other factors used in evaluating bids or proposals.

SECTION 6: METHODS OF PROCUREMENT

In addition to the Department's code's purchasing provisions, one of the following methods should be used for purchasing and procurement:

- A. **Micro Purchase:** the aggregate dollar amount does not exceed \$3,500, or the current limitation set by the Federal Acquisition Regulation, where this threshold is periodically adjusted for inflation. To the extent practicable, the Department will distribute micro-purchases equitably among qualified suppliers.
- B. **Small Purchase:** Purchases up to the Simplified Acquisition Threshold, which is currently \$150,000. Informal purchasing procedures are acceptable, but must obtain price or rate quotes from an adequate number of sources.

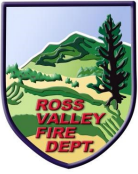


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- C. **Sealed Bid:** Purchases over the Simplified Acquisition Threshold, which is currently \$150,000. This purchase method requires formal solicitation, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conformed to all material terms and is the lowest in price. If this method is used, the following requirements apply:
- a. Preferred procurement method for construction contracts. If the following conditions apply:
 - i. a complete, adequate, and realistic specification or purchase description is available;
 - ii. two or more responsible bidders are willing and able to compete effectively for the business, and,
 - iii. the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.
 - b. If this method is used, the following requirements shall apply:
 - i. the invitation for bids will be publicly advertised, and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time before the date for opening the bids;
 - ii. the invitation for bids, which will include any specifications and pertinent attachments, must define the terms or services for the bidder to respond appropriately;
 - iii. all bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - iv. 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 will only be used 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
 - v. any or all bids may be rejected if there is a sound documented reason.



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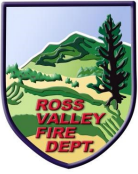
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D. **Competitive Proposals:** Purchases over the Simplified Acquisition Threshold, which is currently \$150,000, require formal solicitation, fixed-price or cost-reimbursement contracts. Moreover, this type of purchase is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors. If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practicable.
- b. Must solicitate proposals from an adequate number of qualified sources.
- c. The methods for conducting technical evaluations of the proposals received and for selecting recipients may include, but not limited to oral interviews, references, past performance, availability to perform work, and certifications as determined by project scope. Any response that takes exception to any mandatory items in this proposal process may be rejected and not considered.
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
- e. Competitive proposal procedures may be used for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated. The most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure A/E professional services. It cannot be used to purchase other types of services, though A/E firms are a potential source to perform the proposed effort.

E. **Noncompetitive proposals:** Also known as sole-source procurement, this may be appropriate only when one or more of the following criteria are met:



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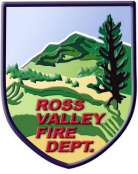
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- a. the item is available only from a single source,
- b. the public emergency for the requirement will not permit a delay resulting from competitive solicitation,
- c. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity, or
- d. after solicitation of a number of sources, competition is determined inadequate.

F. **Contract Cost and Price:** shall perform a cost or price analysis connected with every procurement action over the Simplified Acquisition Threshold, which is currently \$150,000, including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation. Still, as a starting point, independent estimates shall be made before receiving bids and proposals.

- a. Shall negotiate profit as a separate element of the price for each contract without a no price competition, and in all cases, cost analysis is performed. To establish a fair and reasonable profit, the following considerations shall be given
 - i. consideration to the complexity of the work to be performed,
 - ii. the risk borne by the contractor, and their investment,
 - iii. the amount of subcontracting,
 - iv. the quality of its record of past performance, and
 - v. industry profit rates in the surrounding geographical area for similar work.
- b. 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 Department under Subpart E- Cost Principles of Part 200- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- c. shall use the cost plus a percentage of cost and percentage of construction cost methods of contracting.



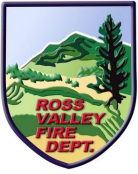
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G. **Federal Awarding Agency or Pass-Through Entity Review:** The Department, upon request of the Federal awarding agency or pass-through entity shall make the following available:

- a. 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 proposed for acquisition. This review generally will take place before incorporating the specification into a solicitation document. However, suppose the Department desires to have the review accomplished after developing a solicitation. In that case, 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. Pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - i. procurement procedures or operations fails to comply with the procurement standards in this part;
 - ii. the procurement is expected to exceed the Simplified Acquisition Threshold of \$150,000, and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - iii. the procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - iv. 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
 - v. a proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition threshold.
- c. The Department 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.



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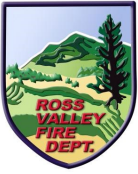
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- d. The Department may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- e. The Department 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 Department that it is complying with these standards. The Department must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

H. **Bonding Requirements:** For construction or facility improvement contracts or subcontracts over the Simplified Acquisition threshold of \$150,000, the Federal awarding or pass-through entity may accept the Department's bonding policy and requirements, provided that the Federal awarding agency or pass-through entity determined 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 (5%) 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 the contractor's part for 100 percent (100%) of the contract price. A performance bond is executed in connection with a contract to secure the fulfillment of all the contractor's obligations under such contract; and,
- c. A payment bond on the contractor's part for 100 percent (100%) of the contract price. This type of payment bond is executed in connection with a contract to assure payment



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as required by law of all persons supplying labor and material in completing the work provided for in the contract.

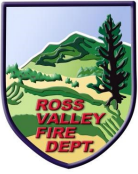
I. **Contracting with Small and Minority Business, Women's Business Enterprises, and Labor**

Surplus Area Firms: Shall take all necessary affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:

- a. Placing qualified firms on solicitation lists to assure they are solicited whenever they are potential sources;
- b. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation;
- c. Establishing delivery schedules, where the requirement permits, which encourage participation;
- d. 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,
- e. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs a through d of this section.

J. **Contract Provisions:** As established by the CFR, contracts with a Federal funding source must include the following compliance provisions, as applicable:

- a. **Equal Employment Opportunity:** All contracts, when funded in whole or partly by monies derived from the Federal government (either directly or indirectly), shall contain a provision requiring compliance with Executive Order No. 11246, as Amended (Equal Employment Opportunity), as amended by Executive Order No. 11375 (requires nondiscrimination in contracting) and as supplemented in U.S. Department of Labor regulations.



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- b. **Remedies:** Contracts over \$150,00 must contain provisions or conditions that will allow for administrative, contractual or legal remedies in instances when contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate
- c. **Termination:** All contracts over \$10,000 must address termination for cause and convenience by the Department, including the manner by which it will be affected and the basis for settlement.
- d. **Record Retention:** Contractors must be required to maintain all the necessary records for three years after the Department makes a final payment unless a specific exception applies. Further, contracts must contain a provision that the Department, the federal grantor agency, the U.S. Comptroller General or any of their duly authorized representatives must have access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract, for purposes of making audits, examinations, excerpts, and transcripts.
- e. **"Anti-Kickback":** Applies to construction or repair contracts over \$2,000. It prohibits kickbacks in construction contracts funded with Federal monies. Contractors, and subcontractors or subrecipients shall be prohibited from inducing any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled and suspected or reported violations shall be immediately reported to the Federal awarding agency.
- f. **Davis-Bacon Act:** Applies to construction contracts over \$2,000. It requires contracts to pay laborers and mechanics wages not less than the prevailing wage as determined by the Secretary of Labor and must be required to pay wages not less than once a week. Each bid solicitation published by the Department must contain the current prevailing wage determination. Any award of the contract must be conditioned on contractor's acceptance of that wage determination and suspected or reported violations of this act shall be immediately reported to the Federal awarding agency.



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- g. **Contract Work Hours & Safety Standards:** When applicable, all contracts awarded by recipients over \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with these standards.
- h. **Environmental Law Compliance:** Applies to contracts and sub grants over \$150,000. Contractor shall be required to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC §7606) and the Clean Water Act. (42 USC §1368). Suspected or reported violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- i. **Debarment and Suspension:** Contracts funded with Federal grant monies may not be awarded to contractors that have been debarred or suspended from receiving Federal monies pursuant to the System for Award Management (SAM).
- j. **Byrd Anti-Lobbying Amendment:** Contractors that apply or bid for an award of \$100,000 must certify that they will not and have not used Federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award. (31 U.S.C. §1352).