

**Town of Manila
Federal Procurement Policy**

Article 1: *Introduction and Purpose.*

In keeping with its commitment to maintain the highest standards of conduct and ethics, the Town of Manila (“Town”) has adopted this Federal Procurement Policy (“Federal Policy”) as a federally issued requirement (2 CFR 200.318(a)) to ensure that goods and services purchased by Town are obtained in a cost-effective manner and in compliance with applicable federal and state laws (2 CFR 200.317 – 200.327; 1500.10 - 11).

The acquisition processes described in this Federal Policy apply to all purchases made utilizing funds secured through federal funding sources by (1) Town’s Purchasing Department, and (2) Town programs independent of the Purchasing Department by employees, directors, officers, or agents (together, “Purchasing Agents”). Purchases may also be subject to prior funding source approval and additional requirements imposed by grants or contracts. Purchasing Agents are responsible for reviewing any such additional requirements, bringing them to the attention of the Purchasing Department, and ensuring that contractors and vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Article 2: *Code of Conduct.*

- A. Purchasing Agents shall not participate in the selection, award, or administration of a contract if they have a real or apparent conflict of interest. Such a conflict arises when:
- i. The Purchasing Agents; any immediate family member (spouse, child, parent, parent-in-law, sibling, or sibling-in-law); partner; or an organization that employs, or is about to employ, any of the above has a direct or indirect financial or other interest in or will receive a tangible personal benefit from a firm or individual considered for the contract award (2 CFR 200.318(c)(1)).
 - ii. An “organizational conflict of interest” is created because of a relationship Town has with a parent, affiliate, or subsidiary organization that is involved in the transaction such that Town is or appears to be unable to be impartial in conducting a procurement action involving the related organization (2 CFR 200.318(c)(2)).
- B. Purchasing Agents shall not solicit or accept gifts, money, gratuities, favors, or anything of monetary value, except unsolicited items or services of nominal value (\$25 to \$50) from vendors, prospective vendors, parties to subcontracts, or any other person or entity that receives, or may receive, compensation for providing goods or performing services for Town (2 CFR 200.318(c)(1)).
- C. All Purchasing Agents shall review and comply with the Town’s procedures for disclosing, reviewing, and addressing actual and potential conflicts of interest.

Article 3: *Procurement Requirements and Considerations.*

- A. Competition. All procurements shall be conducted in a manner that provides, to the maximum extent practical, full, and open competition (2 CFR 200.319(a)) and should include the use of the tool in Appendix 5. Procurements shall:

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- i. Avoid noncompetitive practices that may restrict or eliminate competition, including but not limited to (2 CFR§200.319(a-b)):
 - a. Unreasonable qualification requirements.
 - b. Unnecessary experience and excessive bonding requirements.
 - c. Noncompetitive pricing practices between firms or affiliated companies.
 - d. Noncompetitive contracts to consultants on retainer contracts.
 - e. Organizational conflicts of interest.
 - f. Specifying “brand name” only instead of allowing “an equal” product.
 - g. Arbitrary actions.
- ii. Not intentionally split a single purchase into two or more separate purchases to avoid dollar thresholds that require more formal procurement methods.
- iii. Exclude contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for a proposal from competing for such procurement (2 CFR 200.319(a)).
- iv. Include in any prequalified list an adequate number of current, qualified vendors, firms, or products (2 CFR 200.319(d)).
- v. Not preclude potential bidders from qualifying during the solicitation period (2 CFR 200.319(d)).
- vi. Not use any geographic preferences (state, local, or tribal) in the evaluation of bids or proposals, except where expressly mandated or encouraged by applicable Federal statutes (2 CFR 200.319(b)).
- vii. 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 (2 CFR 200.319(e)).

B. Profit. For sole source procurements or when cost analysis is used (not required on amounts under the *Simplified Acquisition Threshold (SAT)*), profit must be negotiated as a separate element of the procurement price (2 CFR 200.324(b)).

- i. To establish a fair and reasonable profit, consider: complexity of work performed, risk borne by contractor, contractor’s investment, amount of subcontracting, quality of contractor’s record and past performance, and industry profit rates in surrounding geographical area for similar work (2 CFR 200.324(b)).
- ii. Town may not use either the cost plus a percentage of cost, or percentage of construction cost methods of contracting (2 CFR 200.324(d)).

C. Minority Owned, Women Owned, and Small Business Vendors. Town is committed to taking all necessary affirmative steps to assure that minority business, women’s business enterprises and labor surplus area firms (“MWSB Vendors”) are used whenever possible. Such steps include:

- i. Placing qualified MWSB Vendors on solicitation lists;
- ii. Soliciting MWSB Vendors whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWSB Vendors;
- iv. Establishing delivery schedules, where requirement permits, which encourage participation by MWSB Vendors;

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- v. Using services and assistance, as appropriate, of such organizations as Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts used, to take affirmative steps listed in paragraphs (i) through (v) of this section (2 CFR 200.321).

D. Disadvantaged Business Enterprises (DBE): The Town will make good faith efforts to contract with DBEs whenever procuring construction, equipment, services, and supplies (40 CFR 33.301). The efforts and methods utilized will be documented and retained. Examples of documentation utilized are as follows: email logs, phone logs, electronic searches and communication, handouts at conferences, flyers sent to DBEs and other similar records.

E. Domestic Requirements for Procurements. As appropriate and to the extent consistent with law, the Town 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 will be included in all subawards including all contracts and purchase orders for work or products under this award (2 CFR 200.322(a-b)).

- i. The Town will implement the “Buy America” (BABA) preferences established in 2 CFR part 184 by adding the requirements in all subawards, contracts, and purchase orders..

F. Minimum Bonding Requirements (2 CFR 200.326). For construction or facility improvement contracts or subcontracts exceeding the SAT (\$250,000), the requirements for bonding shall, at a minimum, be as follows:

- i. A bid guarantee from each bidder is equivalent to five percent of the bid price (2 CFR 200.326(a)).
- ii. A performance bond on the part of the contractor is for 100% of the contract price (2 CFR 200.326(b)).
- iii. A payment bond on the part of the contractor is for 100% of the contract price (2 CFR 200.326(c)).
- iv. All bonds required in this section are obtained from companies holding certificates of authority as acceptable sureties pursuant to the surety requirements for companies doing business with the United States (31 CFR Part 223 and 2 CFR 200.326(d)).

G. Solicitations. All solicitations shall incorporate a clear and accurate description of the technical requirements for products or services to be procured. Descriptions:

- i. Must not contain features which unduly restrict competition.
- ii. May include a statement of the qualitative nature of the material, product or service to be procured.
- iii. When necessary, must set forth minimum essential characteristics and standards necessary to satisfy its intended use.
- iv. Must avoid detailed product specifications, if at all possible.
- v. May use a “brand name or equivalent” description to define performance or other salient requirements when impractical or uneconomical to make a clear and accurate description of

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technical requirements. Specific named brand features required to be met must be clearly stated.

- vi. Must identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids and proposals (2 CFR 200.319(c)).
- vii. Must not preclude potential bidders from qualifying during the solicitation period (2 CFR 200.319(e)).
- viii. Must remain open at least 30 days as provided in 40 CFR 33.301(b).

H. Considerations. Purchasing Agents should consider taking the following actions when procuring goods and services:

- i. Conduct a lease vs. purchase analysis, when appropriate, including for property and large equipment (2 CFR 200.318(d)).
- ii. Consolidate or break out procurements to obtain a more economical purchase, if possible (2 CFR 200.318(d)).
- iii. Use state and local intergovernmental or inter-entity agreements, or common or shared goods and services, where appropriate (2 CFR 200.318(e)).
- iv. Use federal excess and surplus property in lieu of purchasing new equipment and property, if feasible and reduces project costs (2 CFR 200.318(f)).
- v. Use “value engineering” clauses to offer reasonable opportunities for cost reductions in construction contracts for projects of sufficient size (2 CFR 200.318(g)).
- vi. Use time and materials contracts only if no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at their own risk. If such contract is negotiated and awarded, Town must assert a high degree of oversight to obtain reasonable assurance that contractor using efficient methods and effective cost controls (2 CFR 200.318(j)).

I. Consultant Compensation. Town will follow the requirements of 2 CFR 1500.10 with regard to the compensation of consultants. The consultant cap will apply regarding consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate.

J. Supplies vs. Equipment. The town recognizes the differences between supplies and equipment as well as their respective requirements as defined in 2 CFR 200.1.

Article 4: Procurement Methods.

A. All Procurements. All procurements made under this policy shall:

- i. Be necessary, at a reasonable cost, documented, not prohibited by law or the applicable funding source, and made in accordance with this Policy (2 CFR 200.318(a-c)).
- ii. Avoid acquiring unnecessary or duplicative items (2 CFR 200.318(d)).
- iii. Engage responsible vendors who possess the ability to perform successfully under the terms and conditions of a proposed procurement (2 CFR 200.318(h)). Purchasing Agents shall consider: vendor integrity, public policy compliance, past performance record and financial and technical resources (2 CFR 200.318(h)).

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B. Standard Methods. For transactions meeting the specifications set forth in Appendix 1, Purchasing Agents shall follow the applicable procurement method set forth therein and as stated in 2 CFR 200.320.

C. Exceptions to Standard Methods.

- i. *Sole Source.* Procurement by solicitation of a proposal from a single source may only be used if one of the following apply and are documented:
 - a. Item is only available from a single source;
 - b. Public exigency or emergency will not permit any delay;
 - c. Federal awarding agency or pass-through expressly authorizes in response to a Town request; or
 - d. After soliciting a number of sources, competition is determined inadequate (2 CFR 200.319(f)).

Article 5: Procurement Procedures. See Appendix 2 for federal Town Procurement Procedures.

Article 6: Contract Provisions. All contracts will contain the following clause:

“The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under federal financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

All Town procurement contracts shall contain the applicable contract provisions contained in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (2 CFR 200.326):

A. Contracts for More Than the Specified Acquisition Threshold (SAT). SAT, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. All Contracts in Excess of \$10,000. Contracts must address termination for cause and for convenience by the Town including the manner by which it will be effected and the basis for settlement.

C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

D. Davis Bacon Act as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the Town must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts

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Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Town must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Town must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Town must report all suspected or reported violations to the Federal awarding agency.

E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the Town in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. The Town also understands and complies with the requirements found in 2 CFR 200.315 stating that EPA reserves a royalty-fee, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the Town to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

H. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for

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Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated 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 covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Town.

J. 2 CFR 200.322 Procurement of recovered materials. Town will comply with section 6002 of the Solid Waste Disposal Act and procure only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable. This requirement will apply when it is consistent with maintaining a satisfactory level of competition and where the purchase price exceeds \$10,000, and when 2 CFR 200.322 is applicable.

Article 7: Documentation.

A. Debarment. Town shall either:

- i. Confirm and document that the vendor is not excluded from doing business with the federal government (see www.sam.gov/SAM/) before entering into a contract (Appendix II to 2 CFR Part 200); or
- ii. Obtain a signed Debarment Certificate substantially in the form of Appendix 3.

B. Lobbying Certificate. Town shall obtain signed Lobbying Certificates substantially in the form of Appendix 4 for procurements > \$100,000 (Appendix II to 2 CFR Part 200).

C. Records. Town shall maintain records sufficient to detail history of each procurement transaction.

These records must include, but are not limited to (2 CFR 200.302(b)(7)):

- i. A description and supporting documentation showing rationale for procurement method (e.g., cost estimates);
- ii. Selection of contract type;
- iii. Written price or rate quotations (such as catalog price, online price, email or written quote), if applicable;
- iv. Copies of advertisements, requests for proposals, bid sheets or bid proposal packets;
- v. Reasons for vendor selection or rejection, including Finance Committee and Board minutes, rejection letters and award letter; and
- vi. The basis for the contract price (2 CFR 200.318(i)).

D. Internal Controls. Town will maintain internal controls as required by 2 CFR 200.302(b)(4) to include procedures to document that contracts are successfully performed (i.e., invoices showing goods and

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services delivered and accepted) and charges to the agreement for contractual services are accurate and documented.

E. Audit Requirements. The Town understands and accepts the audit requirements as explained in 2 CFR part 200, subpart F Audit Requirements. If the Town spends in excess of \$750,000 in one (1) calendar year, they will be subject to a single or program-specific audit.

Article 8: Compliance with this Policy. Program Directors and, where applicable, the Purchasing Department, shall maintain oversight to ensure that contractors and vendors perform in accordance with the terms, conditions, and specifications of contracts or purchase orders (2 CFR 200.318(b)). Violations of this policy may result in disciplinary action, up to and including termination (2 CFR 200.318(c)(1)). The Town alone must be responsible, in accordance with good administrative practice and sound business judgement, 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 (2 CFR 200.318(k)).

Reviewed by Legal Counsel:

Reviewed and Adopted by Town Council: