

**CITY OF KIMBALL**  
**MUNICIPAL POLICY NUMBER 02-2016**  
**PROCUREMENT POLICY RELATING TO FEDERAL AWARDS**

**DATE COUNCIL APPROVED:** December 20, 2016

**I. Conflicts of Interest**

No employee, officer, or agent of the City of Kimball will 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 City of Kimball must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the financial interest is not substantial or the gift is an unsolicited item of nominal value. Disciplinary actions will be applied for violations of such standards by officers, employees, or agents of the City of Kimball.

Because of relationships with a parent company, affiliate, or subsidiary organization, the City of Kimball is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization and will not procure with those organizations.

**II. Procurement Under Federal Awards**

Procurement of goods and services whose costs are charged to federal awards received by the City of Kimball are subject to all of the specific purchasing policies of the organization. In addition, procurements associated with Federal awards are subject to the following supplemental policies:

1. The City of Kimball will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase.
2. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
3. The City of Kimball will consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services, and using Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
4. The City of Kimball will 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.
5. The City of Kimball will 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.
6. All procurement transactions will be conducted in a manner providing full and open competition. All prequalified lists of persons, firms, or products which are used in acquiring goods and services will be current and include enough qualified sources to ensure maximum open and free competition. Potential bidders will not be precluded from qualifying during the solicitation period.

7. 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 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. All solicitations will also identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

8. All necessary affirmative steps will be taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

9. A cost or price analysis will be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000) 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 City of Kimball will make independent estimates before receiving bids or proposals.

10. All procurement files will be made available for inspection upon request by a Federal awarding agency.

11. All contracts will require the contractor to certify in writing that it has not been suspended or disbarred from doing business with any federal agency.

### **III. Methods of Procurement**

The City of Kimball will use one of the following methods of procurement.

1. Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,500 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

2. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

3. Procurement by sealed bids (formal advertising). 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.

All purchases in excess of \$5,000 shall be made by obtaining written quotations from at least two responsible contractors. All purchases of at least \$25,000, but less than \$100,000, shall be made by obtaining written quotations from at least three responsible vendors. All purchases of \$100,000 or more shall be made by obtaining competitive proposals from at least three responsible vendors. Sealed bids shall be utilized when required by the Federal awarding agency.

In order for sealed bidding to be feasible, the following conditions will 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;
- 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.

If sealed bids are used, the following requirements apply:

- a. 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 prior to the date set for opening the bids;
- 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 publicly opened at the time and place prescribed in the invitation for bids;
- 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.

4. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. 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 practical;
- b. Proposals must be solicited from an adequate number of qualified sources;
- c. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. Competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor 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 are a potential source to perform the proposed effort.

5. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source;

- b. The public exigency or 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.

#### **IV. Suspension and Debarment**

The City of Kimball will review all grant purchases to verify that purchases will not be made against contractors that are on the Debarment or Suspension list supplied by the Government. The City Clerk/Treasurer will review all requisition requests submitted for all grant accounts to make sure the contractor is not on the debarment list. This list is available at - <https://www.sam.gov/>. If a match is found, the Department Head will be notified directly and the City Clerk/Treasurer will not process the requisition. All results of searches will be attached to the filed paperwork for verification of search.

#### **V. Provisions Included in all Contracts**

It is the policy of the City of Kimball to include all of the following provisions, as applicable, in all contracts (including small purchases) with contractors and sub-awards:

1. **Remedies:** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$150,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms.
2. **Termination:** All contracts in excess of \$10,000 shall contain suitable provisions for termination by the City of Kimball, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated due to circumstances beyond the control of the contractor.
3. **Equal Employment Opportunity:** All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
4. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148):** If included in the federal agency's grant program legislation, all construction contracts of more than \$2,000 awarded by the City of Kimball and its sub-recipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. It is the policy of the City of Kimball to place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The City of Kimball shall also obtain reports from contractors on a weekly basis in order to monitor compliance with the Davis-Bacon Act. The City of Kimball shall report all suspected or reported violations to the Federal awarding agency.

5. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333):** [Where applicable] All contracts awarded by the City of Kimball excess of \$100,000 for contracts that involve the employment of mechanics or laborers shall 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.
6. **Rights to Inventions Made Under a Contract or Agreement:** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the City of Kimball in any resulting invention in accordance with 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.
7. **Clean Air Act (42 U.S.C. 7401-7671q and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended:** Contracts and sub-awards of amounts in excess of \$150,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. **Debarment and Suspension (E.O.s 12549 and 12689):** For all contracts, the City of Kimball shall obtain from the contractor a certification that neither the contractor nor any of its principal employees are listed on the Excluded Parties List System in SAM.
9. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):** For all contracts or sub-grants of \$100,000 or more, the City of Kimball shall obtain from the contractor or sub-grantee a certification 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. Likewise, since each tier provides such certifications to the tier above it, the City of Kimball shall provide such certifications in all situations in which it acts as a sub-recipient of a sub-grant of \$100,000 or more.

## **VI. Approval of Policy**

This policy shall be formally approved and adopted by the City Council.