

RESOLUTION NO. 2022-712

**ESTABLISHING A POLICY FOR PROCUREMENTS UTILIZING
FEDERAL FUNDS**

WHEREAS, the Village Council desires to implement a policy to address procurements utilizing federal funds in relation to the responsibilities of the Village in accordance with state and federal law; and

WHEREAS, Federal grant monies must be spent in accordance with the procurement policies of 2 CFR 200; and

WHEREAS, the attached policy reflects the proper 2 CFR 200 procurement standards.

BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF PANDORA, STATE OF OHIO, AND A MAJORITY OF THE MEMBERS THERETO CONCURRING:

SECTION I. When procuring federal funds, all funds shall be spent only when the general procurement standards have been followed in accordance with 2 CFR 200.

SECTION II. The 2 CFR 200 standards reflected in the attached policy are considered law in their entirety upon passage of this Resolution.

SECTION II. That it is found and determined that all formal actions of this Council concerning or relating to the passage of this Resolution were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that result in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION III. This Resolution shall take effect immediately upon its passage.

ADOPTED: December 13, 2022(DATE)

ATTEST:

Kimberly D. Reese
Kimberly D. Reese, Fiscal Officer

APPROVED:

Jeremy Leeclity
Jeremy Leeclity, Mayor

POLICY OF THE VILLAGE OF PANDORA, OHIO
FOR PROCUREMENTS UTILIZING FEDERAL FUNDS

Procurements utilizing federal funds shall be made in compliance with the Code of Federal Regulations (CFR) Title 2 Part 200 and this purchasing policy.

General Procurement Standards (2 CFR Part 200.318)

- a) Procurements by the Village of Pandora, Ohio when utilizing federal funds shall conform to applicable Federal law and the standards identified in this policy.
- b) The Village of Pandora, Ohio shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- c) No employee, officer, or agent of the Village of Pandora, Ohio 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 Village of Pandora, Ohio may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Any Employee determined to be in violation of this section, could be subject to discipline action up to and including termination. Any Elected Official determined to be in violation of this section, could be subject to prosecution and or recall of their position.
- d) The Village of Pandora, Ohio, will consider 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) The Village of Pandora, Ohio, to the extent possible, shall utilize state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- f) The Village of Pandora, Ohio, to the extent possible, shall utilize federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- g) The Village of Pandora, Ohio, to the extent possible, shall utilize 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 Village of Pandora, Ohio, shall 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 Suspension and debarment.

- i) The Village of Pandora, Ohio, shall 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) The Village of Pandora, Ohio, 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:
 - 1) The actual cost of materials; and
 - 2) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- k) The Village of Pandora, Ohio, shall 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.

Competition (2 CFR Part 200.319)

- a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. 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 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.
- b) The Village of Pandora, Ohio, shall 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.
- c) The Village of Pandora, Ohio ensures 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.
- d) The Village of Pandora, Ohio, shall 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 Village of Pandora, Ohio shall not preclude potential bidders from qualifying during the solicitation period.
- e) Noncompetitive procurements can only be awarded in accordance with §200.320(c)

Methods of procurement to be followed (2 CFR Part 200.320)

The Village of Pandora, Ohio will use one of the following methods of procurement when purchasing items with federal funds.

- a) Procurement by micro-purchases - Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$10,000. To the extent practicable, the Village of Pandora, Ohio shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations.
- b) 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 (\$250,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

c) Procurement by sealed bids (formal advertising). When the value of the procurement exceeds the SAT, formal procurement methods are required. 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 bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

1) For sealed bidding to be feasible, the following conditions should be present:

- 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.

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

- i. 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;
- ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond;
- iii. 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;
- 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, 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
- v. Any or all bids may be rejected if there is a sound documented reason.

d) 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:

- 1) 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;
 - 2) Proposals must be solicited from an adequate number of qualified sources;
 - 3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - 4) 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
 - 5) 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 through A/E firms that are a potential source to perform the proposed effort.
- e) 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:
- 1) The item is available only from a single source;
 - 2) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold; (see paragraph (a) of this section);
 - 3) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - 4) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
 - 5) After solicitation of several sources, competition is determined inadequate.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR Part 200.321)

- a) The Village of Pandora, Ohio, shall take all necessary affirmative steps to assure that small and

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.

Domestic preferences for procurements (2 CFR Part 200.322)

- a) As appropriate and to the extent consistent with law, the Village of Pandora 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.

Procurement of recovered materials (2 CFR Part 200.323)

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.

Contract cost and price (2 CFR Part 200.324)

- a) The Village of Pandora, Ohio shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) 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 Village of Pandora, Ohio shall make independent estimates before receiving bids or proposals.
- b) The Village of Pandora, Ohio shall 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 Village of Pandora, Ohio.
- d) The cost plus a percentage of cost and percentage of construction cost methods of contracting may not be used.

Federal awarding agency or pass-through entity review (2 CFR Part 200.325)

- a) The Village of Pandora, Ohio shall 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.
- b) The Village of Pandora, Ohio shall 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 of \$250,000 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 \$250,000, specifies a "brand name" product;
 - 4) The proposed contract is more than the \$250,000 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 \$250,000.
- c) The Village of Pandora, Ohio 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 Village of Pandora, Ohio 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 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 Village of Pandora, Ohio 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 Village of Pandora, Ohio that it is complying with these standards. The Village of Pandora, Ohio must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

Bonding requirements (2 CFR Part 200.326)

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 Village of Pandora, Ohio 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.

Contract provisions (2 CFR Part 200.327)

The Village of Pandora, Ohio contracts utilizing federal funds must contain the applicable provisions described in Appendix II to Part 200-Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200-Contract Provisions for the Village of Pandora, Ohio Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the Village of Pandora, Ohio under the Federal award must contain provisions covering the following, as applicable.

- A. Contracts for **more than the simplified acquisition threshold currently set at \$250,000**, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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** must address termination for cause and for convenience by the Village of Pandora, Ohio including how it will be affected 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 Village of Pandora, Ohio 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 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 Village of Pandora shall 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 Village of Pandora, Ohio shall 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 non-Federal entity 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 non-Federal entity 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.
- G. 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 subgrants of amounts **in excess of \$150,000** must contain a provision that requires the non-Federal award 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 126 89)- A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for 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 each tier up to the non-Federal award.