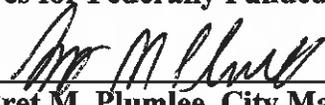


# City of Los Alamitos

## Administrative Regulation

Regulation:	<b>5.3</b>	
Title:	<b>Procurement Policy and Procedures for Federally Funded Projects</b>	
Authority:	<b>LAMC 2.60</b>	
Date:	<b>May 14, 2019</b>	
Revised:		<b>Bret M. Plumlee, City Manager</b>

**1. Purpose:** When the City of Los Alamitos (“City”) receives federal funding for various projects, it must comply with all requirements for federal awards under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found in Title 2 of the Code of Federal Regulations (CFR) part 200, as may be amended, (hereinafter referred to as the “Uniform Guidance”), adopted by this reference and incorporated herein.

The Uniform Guidance sets forth requirements for all government agencies, such as the City, that receive federal funds either directly from the federal government or from a pass-through entity, such as the State of California or other state and local government agencies. All recipients of federal funding, of any amount, are required to establish procurement policies and procedures in conformance with the Uniform Guidance.

This Policy sets forth the City’s policy and procedures for procurements involving federal projects. For purposes of this Policy, a “federal project” includes all purchases of goods and supplies and equipment, procurement of professional and nonprofessional services, and the procurement of public works, which are funded, in whole or in part, by a federal award. This Policy supplements the requirements of Chapter 2.60 of the Los Alamitos Municipal Code (LAMC) (hereinafter referred to as the “Procurement Code”), and other applicable requirements set forth in the LAMC, including administrative regulations adopted thereunder.

All federal projects must be administered by the Public Works Department, Administrative Services Department, and the City Clerk (hereinafter, collectively referred to as “City Staff”) in accordance with this Policy, state and federal laws and regulations, the applicable provisions of the Uniform Guidance, as may be amended, in addition to any conditions mandated by the federal awarding agency or the pass-through entity. Although this Policy sets forth the policies and procedures to assist City Staff in complying with the Uniform Guidance, City Staff must consult the Uniform Guidance directly and comply with its provisions in the procurement and administration of federal projects.

This Policy applies to procurements under federal projects, as defined above, in addition to any work performed on a federal project that is funded, in whole or in part, by federal funds. All contractors, consultants, professionals, subcontractors, subconsultants, and any other individual or entity performing work on a federal project will be required to adhere to this Policy and comply with the Uniform Guidance, as may be amended. The

projects contain the appropriate provisions to ensure compliance by contractors, consultants, professionals, subcontractors, subconsultants, and anyone performing work on a federal project.

This Policy is adopted by the City in accordance with the Uniform Guidance. It is the responsibility of the Finance Director, Development Services Director, and City Clerk to administer this Policy for all federal projects, including, but not limited to, grants, awards, cooperative agreements, and any other method of federal funding received by the City, as this Policy and the Uniform Guidance may be amended from time to time.

**2. Definitions:** These definitions are derived, in relevant part, from 2 CFR 200, Subpart A:

(i) Cooperative agreement (§200.24) – a legal instrument of financial assistance between a federal awarding agency or pass-through entity and a non-federal entity that, consistent with 31 U.S.C. §§6302-6305:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the federal awarding agency or pass-through entity to the non-federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use; and

(b) Is distinguished from a grant in that it provides for substantial involvement between the federal awarding agency or pass-through entity and the non-federal entity in carrying out the activity contemplated by the federal award.

(c) The term does not include: (1) a cooperative research and development agreement as defined in 15 U.S.C. 3710a; or (2) an agreement that provides only (i) direct United States Government cash assistance to an individual, (ii) a subsidy, (iii) a loan, (iv) a loan guarantee, or (v) insurance.

(ii) Federal award (§200.38) – has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

(a) (1) The federal financial assistance that a non-federal entity receives directly from a federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-federal entity receives directly from a federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability.

(b) The instrument setting forth the terms and conditions of the federal award. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) Federal award does not include other contracts that a federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities.

(iii) Federal awarding agency (§200.37) – the federal agency that provides a federal award directly to a non-federal entity.

(iv) Federal financial assistance (§200.40) – assistance that non-federal entities receive or administer in the form of: (a) grants; (b) cooperative agreements; (c) non-cash contributions or donations of property (including donated surplus property); (d) direct appropriations; (e) food commodities; and (f) other financial assistance (except assistance listed in §200.40(b)).

(v) Grant agreement (§200.51) – a legal instrument of financial assistance between a federal awarding agency or pass-through entity and a non-federal entity that, consistent with 31 U.S.C. 6302, 6304:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the federal awarding agency or pass-through entity to the non-federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. §6101(3)); and not to acquire property or services for the federal awarding agency or pass-through entity's direct benefit or use; and

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the federal awarding agency or pass-through entity and the non-federal entity in carrying out the activity contemplated by the federal award.

(c) Does not include an agreement that provides only: (1) direct United States Government cash assistance to an individual; (2) a subsidy; (3) a loan; (4) a loan guarantee; or (5) insurance.

(vi) Micro-purchase (§200.67) – a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-federal entity's small purchase procedures. The non-federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as

otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

(vii) Non-federal entity (§200.69) – a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient. For purposes of this Policy, the City is considered a non-federal entity.

(viii) Pass-through entity (§200.74) – a non-federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. For purposes of this Policy, an example of a pass-through entity is the State of California Department of Transportation.

(ix) Recipient (§200.86) – a non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients.

(x) Simple Acquisition Threshold (§200.88) – the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. The simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

(xi) Subaward (§200.92) – an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

(xii) Subrecipient (§200.93) – a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

(xiii) Time and materials type contract (§200.318(j)) – a contract whose cost to a non-federal entity is the sum of: (i) The actual cost of materials; and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

**3. Procurement Standards:** The City's procurement standards are governed by the Procurement Code, the City Charter, the LAMC and other applicable state and local laws and regulations. All procurements and transactions involving federal projects will be conducted in a manner providing full and open competition consistent with

the Procurement Code, the City Charter, the LAMC, the Uniform Guidance, state, local, and federal laws and regulations, as each may be amended.

**Oversight** (§200.318). City Staff will maintain oversight of each federal project to ensure that contractors perform in accordance with the terms, conditions, and specifications of each contract, transaction, and purchase order.

**Conflicts of Interest** (§200.318). It is strictly prohibited for any officer or employee of the City to participate in the selection, award, or administration of a contract supported, in whole or in part, by a federal award if he or she has a real or apparent conflict of interest.

**Unnecessary and Duplicative Items** (§200.318). To the extent feasible, the City will avoid acquisition of unnecessary or duplicative items and will consider consolidating or breaking out procurements to obtain a more economical purchase in compliance with state and federal law. The Development Services Director and Finance Director, or their respective designees, will analyze lease versus purchase alternatives when appropriate and will perform any other appropriate analysis to determine the most economical approach.

**Intergovernmental and inter-entity agreements** (§200.318). To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the City 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.

**Federal excess and surplus property** (§200.318). The City will use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

**4. Solicitations:** All solicitations involving federal projects will be conducted in accordance with the Procurement Code, City Charter, LAMC, Uniform Guidance, and applicable state and federal laws and regulations, as may be amended. The Development Services Director and Finance Director are responsible for ensuring that all solicitations for federal projects are procured in accordance with this Policy.

The City will award contracts only to responsible contractors, consultants, and professionals possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as a bidder's integrity, compliance with public policy, record of past performance, and financial and technical resources. The City will not contract with suspended or debarred contractors in accordance with federal and state requirements.

**Specifications** (§200.319). All solicitations must 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. City solicitations must identify all requirements which the bidders must fulfill and all other factors to be used in evaluating bids or proposals.

Detailed product specifications should be avoided if possible, but if impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by bidders must be clearly stated.

To ensure objective contractor performance and to eliminate unfair competitive advantage, it is the City’s policy that any contractor or consultant that develops or drafts specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements.

**Prequalification** (§200.319(d)). The City will 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. The City will not preclude potential bidders from qualifying during the solicitation period.

**Small and minority businesses, women’s business enterprises, and labor surplus area firms** (§200.321). The City will take affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:

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

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

(iii) 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;

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

(v) 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

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section.

**5. Procurement Methods:** The Development Services Director and Finance Director will ensure that City Staff follows the procurement methods for federal awards found in §200.320 of the Uniform Guidance, as may be amended, which are discussed, in part, below. For federal projects, City Staff must follow the Uniform Guidance and any supplemental requirements in the Procurement Code, the City Charter, the LAMC, and state law. However, should the Procurement Code, The City Charter, or the LAMC provide for stricter purchasing limitations or more-competitive procurement methods, City Staff will follow the LAMC unless such methods conflict with the Uniform Guidance.

**Procurement by micro-purchases (§200.320(a)).** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold defined under §200.67, which amount may be updated from time to time. To the extent practicable, the City will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the City considers the price to be reasonable. Should the City's Procurement Code provide a more restrictive threshold, City Staff will only procure by micro-purchase up to the amount authorized by the Procurement Code.

**Procurement by small purchase procedures (§200.320(b)).** 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 of \$150,000, defined in §200.88, which amount may be updated from time to time. To the extent the City's Procurement Code provides a more restrictive threshold, City Staff will only procure through small purchase procedures up to the amount authorized by the Procurement Code. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources in accordance with the Uniform Guidance and the Procurement Code.

**Procurement by sealed bids (formal advertising) (§200.320(c)).** Under this procurement method, 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 under §200.320(c) if the following conditions apply.

Feasibility. 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.

Requirements. If sealed bids are used, the following requirements apply:

- (i) 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, and 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 in order for the bidder to properly respond;
- (iii) All bids will be opened publicly 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, 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.

**Procurement by competitive proposals (§200.320(d)).** 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, City Staff will comply with the Procurement Code and the requirements set forth in §200.320(d) of the Uniform Guidance, described below:

- (i) 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;
- (ii) Proposals must be solicited from an adequate number of qualified sources;
- (iii) City Staff will use a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (iv) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (v) The City may use 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.

**Procurement by noncompetitive proposals (§200.320(e)).** 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:

- (i) The item is available only from a single source;
- (ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (iii) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
- (iv) After solicitation of a number of sources, competition is determined inadequate.

## **6. Other Contracting Requirements:**

**Time and Materials Contracts (§200.318(j)).** Should the City desire to use a time and materials type contract for a federal project, it may only do so after a determination is made that no other contract is suitable, and if the contract includes a ceiling price, that the contractor exceeds at its own risk. The Uniform Guidance finds that a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price (i.e. a not-to-exceed amount) that the contractor exceeds at its own risk. If the City awards such a contract, City Staff will assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

**Value Engineering (§200.318(g)).** The City will 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.

**Contract Cost and Price (§200.323).** City Staff will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the City must make independent estimates before receiving bids or proposals.

The City must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

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 City under 2 CFR 200, Subpart E—Cost Principles. The

City will not use a cost plus a percentage of cost and percentage of construction cost methods of contracting. The Development Services Director and Finance Director will be responsible for compliance with 2 CFR 200, Subpart E—Cost Principles, in determining allowable costs for a contract.

**Bonding Requirements (§200.325).** 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 City 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 City will comply with the minimum requirements below:

- (i) 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.
- (ii) A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (iii) A payment bond on the part of the contractor for one hundred percent (100%) 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 (§200.326).** The City will incorporate the applicable provisions found in Appendix II to 2 CFR Part 200 – “Contract Provisions for non-Federal Entity Contracts Under Federal Awards” in all contracts let under a federal award. The Development Services Director and Finance Director will ensure all contracts contain the required clauses.

**7. Reporting Violations:** If City Staff is informed of any violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a federal award, staff must report such violations to the City Manager and City Attorney. The City will promptly report all reportable violations to either the pass-through entity or federal awarding agency, as required by the federal award.

**8. Records:** Each City department administering a federal project, in whole or in part, shall be responsible for maintaining records pertaining to the federal project in a separate, designated account file. This includes, but is not limited to, the Administrative Services Department and Public Works Department. The Finance Director, Public Works Director, City Clerk, and any other department involved with a federal project shall be responsible for maintaining records in accordance with this Policy.

The City shall maintain all records relating to a federal project for a period of three (3) years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity. Such records include financial records, supporting documents, statistical records, and all other City records pertinent to the federal award. Compliance with Sections 200.333 – 200.337 of the Uniform Guidance, as may be amended, and this Policy shall be the responsibility of the Development Services Director, Finance Director, and the City Clerk.

For each federal project, the City will maintain all records that detail the history of the project, including, but not limited to, the rationale for the method of procurement, the selection of contract type, contractor selection or rejection, and basis for contract price.

The only exceptions to the three (3) year retention requirement for federal projects apply under the following circumstances:

(i) If any litigation, claim, or audit is started before the expiration of the three (3)-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(ii) When the City is notified in writing by the federal awarding agency, cognizant agency for audit (§200.18), oversight agency for audit (§200.73), cognizant agency for indirect costs (§200.19), or pass-through entity to extend the retention period.

(iii) Records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition of the property or equipment.

(iv) When records are transferred to or maintained by the federal awarding agency or pass-through entity, the three (3) year retention requirement does not apply.

(v) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the City's fiscal year in which the program income is earned.

(vi) Indirect cost rate proposals and cost allocations plans. This applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(a) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3)-year retention period for its supporting records starts from the date of such submission.

(b) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three (3)-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Prior to destruction of any record pertaining to a federal project, the Development Services Director, Finance Director, City Clerk, and any other City department administering a federal project shall verify that the record maintained in his or her department is permitted to be destroyed pursuant to this Policy and the Uniform Guidance. There may be circumstances where the records retention period under this Policy is greater than the City's adopted record retention schedule for such record category description. In such circumstance, this Policy governs, and such record must be retained for the maximum required period under this Policy and the Uniform Guidance.