

Synopsis: This Ordinance, if adopted, would amend and expand the City's existing procurement policy concerning the use of Federal Funds in accordance with the Federal, State, and local laws, rules, and regulations.

ORDINANCE 15-C-23

AN ORDINANCE AMENDING ORDINANCE 3-C-23 TO AMEND AND EXPAND AN ESTABLISHED PURCHASING POLICY

WHEREAS, the City of Huntington, Indiana ("City") from time to time accepts funding from various sources, including the Federal Government; and

WHEREAS, on the 31st day of January 2023, Council adopted Ordinance 3-C-23 establishing certain purchasing policies for purchasing goods, materials, and services in accordance with Title 2, Part 200 of the Code of Federal Regulations; and

WHEREAS, the City has received information and guidance from the Federal Emergency Management Agency (FEMA) that the City's existing procurement policy should be amended and expanded to include additional provisions broadly addressing reporting requirements, Federal payments, contracting with small and minority businesses, and competition; and

WHEREAS, the Common Council of the City of Huntington, Indiana ("Council") finds that it is in City's best interest to restate its existing policy and then amend and expand its purchasing policy to comply with Federal regulations and to promote economic efficiency and continuity in purchasing; and

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Huntington, Indiana as follows:

1. For purchasing with no Federal involvement, the City will follow State law outlined in Indiana Code 5-22 *et seq.*, as well as any other applicable State and local provisions.
2. For purchasing involving Federal funds or Federal oversight, the following procedure shall be followed:
 - a. The City will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following:
 - i. Rationale for the method of procurement
 - ii. Selection of contract type
 - iii. Contractor selection or rejection, and
 - iv. The basis for the contract price
 - b. **Informal procurement methods.** When the value of the procurement for property or services under a federal award does not exceed the simplified acquisition threshold (SAT), as defined by Federal law, formal procurement

methods are not required. The City may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

i. Micro-purchases

1. **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold established by Federal law. To the maximum extent practicable, the City should distribute micro-purchases equitably among qualified suppliers.
2. **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the City considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly.
3. **Micro-purchase thresholds.** The City adopts the Federally determined threshold for micro purchases, reserving the right to increase the threshold based on an evaluation of risk.
4. If the City decides on a threshold above the Federal standard, the City must include any of the following:
 - a. a qualification as a low-risk auditee, in accordance with the Federally set criteria for the most recent audit;
 - b. an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - c. for public institutions, a higher threshold consistent with state law.
5. If the City increases the micro-purchase threshold over \$50,000, it must be approved by the cognizant agency for indirect costs. The City must submit a request with all Federal requirements. The increased threshold is valid until there is a change in status in which the justification was approved.

ii. Small purchases

1. **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified

acquisition threshold. Price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the City Council.

2. **Simplified acquisition thresholds.** The City adopts the Federal simplified acquisition threshold.
- iii. **Formal procurement methods.** When the value of the procurement for property or services under a federal financial assistance award exceeds the SAT, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with Federal law. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold:
 1. **Sealed bids.** Bids shall be 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.
 2. **Sealed bids applicability.** Sealed bids will be used when the following conditions are present:
 - a. A complete, adequate, and realistic specification or purchase description;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - c. A firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 3. If sealed bids are used, the following requirements apply:
 - a. 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;
 - 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 opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - 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. **Proposals.** A procurement method in which either a fixed price or cost reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - b. The City will hire experts to provide technical evaluations of the proposals received and advice making selections;
 - c. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the City, with price and other factors considered; and
 - d. The City 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.

iv. **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
 2. The item is available only from a single source;
 3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 4. The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the City; or
 5. After solicitation of a number of sources, competition is determined inadequate.
- c. The City 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.
- d. 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.
- e. The City will follow procedures outlined in CFR 180.300, particularly that the Clerk-Treasurer will verify that the person (vendor) with whom the City intends to do business is not excluded or disqualified, by checking (a) SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person (vendor) and the Senior Deputy Clerk-Treasurer or Department Superintendent will review the findings of the Clerk-Treasurer on Sam.gov.

BE IT FURTHER ORDAINED, that the following provisions are additionally adopted as purchasing and procurement policies:

1. **Financial Management System:** The financial management system for financial reports, including Federal Financial Report SF-425, and grant agreements of the City will be entered by

the Clerk-Treasurer and reviewed by the appropriate department supervisor and Senior Deputy Clerk-Treasurer and will provide for accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

2. **Federal payment:**

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies".

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. The Clerk-Treasurer will be responsible to receipt the funds received by the Federal Agency and make the payments to the vendor from the invoices received by the Department Supervisor, while the Senior Deputy Clerk-Treasurer will review the payments are made timely, within 30 days of receipt of the funds. See also § 200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per § 200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, including § 200.339, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A–129, “Policies for Federal Credit Programs and Non-Tax Receivables.” Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial

obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.343.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than \$250,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the appropriate entity and in an accurate and timely fashion.

3. Contracting with small and minority businesses, woman's business enterprises, and labor surplus area firms:

(a) The non-Federal entity must take all necessary affirmative steps to assure that 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.

4. **Competition:**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order 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 in order 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.

(c) The non-Federal entity must 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.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure 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.

(e) The non-Federal entity must 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 non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

(Signature Block Next Page)

A motion to consider for final adoption on the same day of introduction was [NOT OFFERED or NOT SUSTAINED or SUSTAINED] by a vote of ___ in favor and ___ in opposition.

Duly adopted on first reading this 25 day of July, 2023, by a vote of 5 in favor and 0 in opposition.

Duly adopted on final reading this 25 day of July, 2023, by a vote of 5 in favor and 0 in opposition.

CITY OF HUNTINGTON, INDIANA by its COMMON COUNCIL

Voting in Favor:

Voting in Opposition:

Charles Chapman

Charles Chapman
(President)

Joe Blomeke

Joe Blomeke

Absent

P J Felton

Dave Funk

Dave Funk

Todd Johnson

Todd Johnson

Seth Marshall

Seth Marshall

Absent

Paul Pike

Attest:

Christi McElhaney
Christi A. McElhaney, Clerk-Treasurer

Presented by me to the Mayor for approval or veto, this 25 day of July, 2023.

Christi McElhaney
Christi A. McElhaney, Clerk-Treasurer

This ordinance having been adopted by the Common Council and presented to me is [APPROVED or VETOED], this 25 day of July, 2023.

Richard Strick
Richard Strick, Mayor