

22-03

**A RESOLUTION ADOPTING SUPPLEMENTAL PROCUREMENT PROCEDURES
FOR ELK COUNTY, KANSAS**

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF ELK COUNTY, KANSAS,
THAT THE FOLLOWING SUPPLEMENTAL PROCUREMENT PROCEDURES BE AND ARE
HEREBY ADOPTED.

I - PURPOSE

These procedures establish certain standards and guidelines and a code of conduct for the procurement of supplies, equipment, materials and services from private businesses, contractors and consultants by Elk County, Kansas (the "County") and are intended to supplement the County's Procurement Procedures in effect as of the date of adoption hereof.

II - GENERAL PROVISIONS

The Department Head of each County Department shall be responsible for ensuring compliance with these procedures as to that Department.

III - CODE OF CONDUCT IN PURCHASING

Ethical conduct in managing the County's purchasing activities is absolutely essential. Staff must always be mindful that they represent the County and the County's Board of Commissioners and share a professional trust with other staff.

- Staff shall discourage the offer of, and decline, individual gifts or gratuities of value in any way that might influence the purchase of supplies, equipment, and/or services.
- Staff shall notify their immediate supervisor if they are offered such gifts.
- No employee shall participate in the selection or administration of a vendor if a real or apparent conflict of interest would be involved. Such a conflict would arise if an employee, or any member of his/her immediate family, his/her spouse/partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the vendor selected.
- Employees shall neither solicit nor accept gratuities, favors, or anything of monetary value from vendors or parties to sub-agreements.
- Unsolicited gifts of a nominal value (less than \$25) may be accepted with the approval of the Department Head.

IV - COMPETITION (GOVERNMENT GRANTS)

In order to comply with the Uniform Guidance applicable to Federal awards in favor of the County:

1. All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of the Uniform Guidance. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and 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:

- a. Placing unreasonable requirements on firms in order for them to qualify to do business;
 - b. Requiring unnecessary experience and excessive bonding;
 - c. Noncompetitive pricing practices between firms or between affiliated companies;
 - d. Noncompetitive contracts to consultants that are on retainer contracts;
 - e. Organizational conflicts of interest;
 - f. 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
 - g. Any arbitrary action in the procurement process.
2. The County shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local 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.
 3. All solicitations prepared and issued by the County shall:
 - a. 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
 - b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
 4. The County 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 County shall not preclude potential bidders from qualifying during the solicitation period.
 5. The County shall avoid the acquisition of unnecessary or duplicative items. Consideration shall be given to 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.

6. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the County shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
7. The County shall use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
8. The County shall 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.
9. The County 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.

V - NON-DISCRIMINATION POLICY

All vendors/contractors who are the recipients of County funds, or who propose to perform any work or furnish any goods under agreements with the County, shall agree to these important principles:

1. Vendors/contractors will not discriminate against any employee or applicant for employment because of race, religion, color, sexual orientation or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the vendors/contractors.
2. Vendors/contractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Notices, advertisement and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for meeting the intent of this section.

VI - PROCUREMENT PROCEDURES (GOVERNMENT GRANTS)

The following are County's procurement procedures to be followed in procuring goods or services from contractors using Federal funds:

1. The County shall avoid purchasing items that are duplicative or not necessary for the performance of the activities required by a Federal award.
2. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis, to determine which would be the most economical procurement.

3. The County 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.
4. The County 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.
5. The County may use time and material type contracts 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 material type contract means a contract whose cost to the County is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open-ended contract price, 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 that the contractor exceeds at its own risk. Further, the County shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
6. Some form of cost or price analysis shall be made for procurements in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis shall be dependent on the particular procurement, but shall always include the preparation of independent estimates prior to receiving bids or proposals.
7. The County 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.
8. Costs or prices based on estimated costs for contracts under a Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the County under the Uniform Guidance.
9. All contracts with vendors shall require the vendor to certify in writing that it has not been suspended or disbarred from doing business with any Federal agency. (Alternatively, the County may research potential vendors on the Excluded Parties List at the GSA's website.)
10. The County shall not utilize the "cost-plus-a-percentage-of-costs" or "percentage of construction costs" methods of contracting.
11. In addition to the conflict-of-interest policy described earlier, no employee is permitted to 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, any member of his or her immediate family, his or her spouse/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. No employee of the County may solicit or accept gratuities,

favours, or anything of monetary value from contractors or parties to subcontracts; provided, however, the County may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Disciplinary action shall be applied for violations of such standards by any employee.

VII - USE OF PURCHASE ORDERS

The County utilizes a purchase order system. A properly completed purchase requisition shall be required for each purchase decision, with the exception of travel advances and expense reimbursements, which require the preparation of a separate form described elsewhere in this manual. A properly completed purchase requisition shall contain the following information, at a minimum:

1. Specifications or statement of services required;
2. Vendor name, address, point of contact and phone number;
3. Fund and short account that will be paying for item;
4. Net price per unit, less discount, if any;
5. Total amount of order;
6. Authorized signature; and
7. Date purchase order was prepared.

VIII - AUTHORIZATIONS AND PURCHASING LIMITS

The Authorizations and Purchasing Limits required for purchase orders shall be as set forth in Article III of the current Procurement Procedures; provided, for any government grants or awards, the County shall adhere to the Procurement Procedures or the government grant or award requirements, whichever is more restrictive.

IX - REQUIREMENTS FOR SOLICITATIONS OF QUOTATIONS FROM CONTRACTORS (FEDERAL AWARDS)

Solicitations for goods and services (requests for proposals or RFPs) from contractors when the contractors are to be paid using Federal funds should provide for all of the following:

1. A clear and accurate description of the technical requirements for the material, product or service to be procured. Descriptions shall not contain features which unduly restrict competition.
2. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

3. Technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
4. The specific features of "brand name or equal" descriptions that bidders are required to meet when appropriate.
5. The acceptance, to the extent practical, of products and services dimensioned in the metric system of measurement.
6. Preference, to the extent practical, for products and services that conserve natural resources and protect the environment and are energy efficient.
7. Preference for recycled products pursuant to EPA guidelines.
8. A description of the format, if any, in which proposals must be submitted, including the name of the person to whom proposals should be sent.
9. The date by which proposals are due.
10. Required delivery or performance dates/schedules.
11. Clear indications of the quantity or quantities requested and unit(s) of measure.

X - METHODS OF PROCUREMENT (FEDERAL AWARDS)

All procurements involving Federal funds shall be made using one of the following methods acceptable under the Uniform Guidance:

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 \$5,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the County shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the County 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.
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. The sealed bid method is the preferred method for procuring construction, if the following conditions:
 - a. In order for sealed bidding to be feasible, the following conditions should be present:
 - A complete, adequate, and realistic specification or purchase description is available;

- Two or more responsible bidders are willing and able to compete effectively for the business; and
 - 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.
- b. If sealed bids are used, the following requirements apply:
- 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;
 - 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;
 - All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - 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
 - 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 County shall document its technical evaluations of the proposals received and for selecting recipients;
- d. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. The County 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. 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 (sole sourcing).** 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 County; or
 - d. After solicitation of a number of sources, competition is determined to be inadequate.

XI - PROVISIONS INCLUDED IN ALL CONTRACTS — FEDERAL AWARDS

The County includes all of the following provisions, as applicable, in all contracts charged to Federal awards (including small purchases) with vendors and sub-awards to sub-recipients:

1. **Equal Employment Opportunity.** All contracts shall contain a provision requiring compliance with E.O. 1 1246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 1 1246 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."
2. **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c).** All contracts and sub-grants in excess of \$2,000 for construction or repair awarded by the County and its sub-recipients shall contain a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), 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." This Act provides that each contractor or sub-recipient shall 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 County will report all suspected or reported violations to the Federal awarding agency.
3. **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7).** If included in the Federal agency's grant program legislation, all construction contracts of more than \$2,000 awarded by the County 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. The County will 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 County shall also obtain reports from

contractors on a weekly basis in order to monitor compliance with the Davis-Bacon Act. The County shall report all suspected or reported violations to the Federal awarding agency.

4. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** Where applicable, all contracts awarded by the County in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Works Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute 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 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.** Contracts and sub-grants of amounts in excess of \$100,000 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).
6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** For all contracts or sub-grants of \$100,000 or more, the County 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 County shall provide such certifications in all situations in which it acts as a sub-recipient of a sub-grant of \$100,000 or more.
7. **Debarment and Suspension (E.O.s 12549 and 12689).** For all contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11) (\$100,000 in 2005), the County shall obtain from the contractor a certification that neither the contractor nor any of its principal employees are listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs.
8. **Remedies.** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403 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.
9. **Termination.** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403 shall contain suitable provisions for termination by the County, 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.

XII – SPECIAL PURCHASING CONDITIONS

1. **Emergencies.** Where equipment, materials, parts, and/or services are needed, quotations will not be necessary if the health, welfare, safety, etc., of staff and protection of County property is involved.
2. **Single Distributor/Source.** Sole source purchases will be made only when solicitation of multiple vendors is not feasible and one of the following conditions apply: The item or service is only available from one source; the situation is a public emergency; the awarding agency approves the purchase, or competition is deemed inadequate (insufficient bidders). A cost/price analysis is required and approval from the funding agency may be necessary if the purchase is over the small purchase threshold.

XIII - POLITICAL INTERVENTION

Prohibited Expenditures. Consistent with its status under the Internal Revenue Code, the County shall not incur any expenditure for political intervention. For purposes of this policy, political intervention shall be defined as any activity associated with the direct or indirect support or opposition of a candidate for elective public office at the Federal, state or local level. Examples of prohibited political expenditures include, but are not limited to, the following: contributions to political action committees; contributions to the campaigns of individual candidates for public office; contributions to political parties; expenditures to produce printed materials (including materials in periodicals) that support or oppose candidates for public office.

Endorsements of Candidates. The County will not endorse any candidates for public office in any manner, or otherwise make statements that support or oppose a candidate or a political party, either verbally or in writing. This policy extends to the actions of the Board of Commissioners, volunteers, and other representatives or agents of the County, when these individuals are acting on behalf of, or are otherwise representing, the County.

Individual vs. County Intervention. The preceding policies prohibiting acts of political intervention apply to the County and to individuals acting on behalf of the County. It does not apply to the personal lives of employees and volunteers of the organization, who have the right to support or oppose political candidates and parties as individuals. Employees and volunteers of the County who engage in political activities outside the scope of their employment with or service to the County shall at all times be mindful of maintaining a clear distinction between personal activities and those which can be attributed to the County.

Prohibited Use of County Assets and Resources. No assets or human resources of the County shall be utilized for political activities, as defined above. This prohibition extends to the use of County assets or human resources in support of political activities that are engaged in personally by employees or other representatives of the County. While there is no prohibition against these individuals engaging in political activities personally (on their own time, and without representing the County), these individuals must at all times be aware that County resources cannot at any time be utilized in support of political activities.

XIV – LOBBYING

Introduction. No lobbying expenditures may be charged directly or indirectly to any Federal award (i.e., the funding must have a non-Federal source to which such lobbying costs can be cited as the source of the activity).

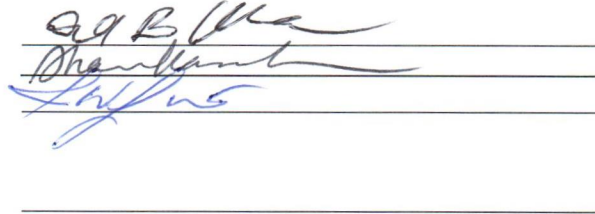
Definition of Lobbying Activities. Lobbying activities conducted by the County may be either direct or indirect. Direct lobbying activities consist of attempts to influence legislation through communication with any member or employee of a legislative body (Federal, state, or local levels) or, if the principal purpose of the communication is lobbying, with any government official or employee who may participate in the formulation of the legislation. Direct lobbying occurs when employees of the County or paid lobbyists communicate directly in attempts to influence legislation. Lobbying is distinguishable from advocacy activities, which involve efforts to advocate certain positions which may have legislative implications, as long as a nonpartisan analysis of the relevant facts is performed.

Segregation of Lobbying Expenditures. Accordingly, the County segregates all direct and indirect lobbying expenditures in a separate section of the chart of accounts in the general ledger. Where appropriate, lobbying expenditures shall also be allocated their fair and reasonable share of employee benefits and other indirect costs in accordance with cost allocation policies described elsewhere in this manual.

Except as amended by this Resolution, the remaining provisions of the County's Procurement Procedures, including all subsections, shall remain in force and effect.

ADOPTED THIS 14th day of March 2022.

**BOARD OF COUNTY COMMISSIONERS
ELK COUNTY, KANSAS**





ATTEST:



COUNTY CLERK