

**AN ORDINANCE AUTHORIZING THE ADOPTION OF A VILLAGE
OF BREWSTER PURCHASES UTILIZING FEDERAL FUNDS POLICY**

WHEREAS, Brewster Village Council desires to adopt a Purchase Utilizing Federal Funds Policy for the departmental operations of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:

SECTION 1: Brewster Village Council shall adopt a Purchase Utilizing Federal Funds Policy as defined below and shall add a Purchase Utilizing Federal Funds Policy to the departmental operations of the Village as follows:

VILLAGE OF BREWSTER POLICY for Purchases Utilizing Federal Funds

A. Objective

Any Purchases that utilize federal funds shall be made in compliance with 2 CFR 200 and this purchasing policy. The following numbers correspond with 2 CFR 200.

B. General Procurement Standards

a) Procurements by the Village of Brewster when utilizing federal funds shall conform to applicable Federal law and the standards identified in this policy.

b) The Village of Brewster shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchases.

c) No employee, officer, or agent of the Village of Brewster 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 Brewster 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 Brewster 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 Brewster, 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 Brewster, 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 Brewster, 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 Brewster, to the extent possible, 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 §200.213 Suspension and debarment.

i) The Village of Brewster, to the extent possible, 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 Brewster, to the extent possible, shall utilize 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 contracts are defined as a contract whose cost to the Village 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 Brewster, to the extent possible, shall, 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.

C. Competition

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 Brewster 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 Brewster 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 Brewster 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 Brewster shall not preclude potential bidders from qualifying during the solicitation period.

D. Methods of procurement to be followed:

The Village of Brewster shall 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 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). 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 known suppliers, 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 firm whose proposal is most advantageous to the program, 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 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.

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 public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- 4) After solicitation of several sources, competition is determined inadequate.

E. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

a) The Village shall 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 (1) through (5) of this section.

F. Contract cost and price.

a) The Village of Brewster 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 shall make independent estimates before receiving bids or proposals.

b) The Village of Brewster 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.

d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

G. Federal awarding agency or pass-through entity review

a) The Village of Brewster 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 Brewster 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 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 Simplified Acquisition Threshold, specifies a "brand name" product;
- 4) The proposed contract is more than the Simplified Acquisition Threshold 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 the Simplified Acquisition Threshold.

c) The Village of Brewster 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 Brewster 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 Brewster 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 that it is complying with these standards. The Village must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

H. Bonding requirements

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 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 obligations 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.

I. Contract provisions

All Village of Brewster 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.

SECTION 2: The above policy replaces any previous version of this policy and supersedes any current policy which may be in conflict with this policy.

SECTION 3: This ordinance shall be in full force and effect at the earliest date provided by law.

Mayor Michael E. Schwab

ATTEST:

Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on November 4, 2019

Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Belloni's IGA, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

Clerk K. Kris King