



## REPORT TO CITY COUNCIL

**DATE:** JUNE 27, 2018

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER 

**BY:** CHRISTY PINUELAS, DIRECTOR OF FINANCE 

**SUBJECT:** AMEND THE OFFICE/EMPLOYEE/OFFICIAL RESPONSIBILITY AND FRAUD PROCEDURES POLICY AND THE TAX ADVANTAGED BONDS POST-ISSUANCE COMPLIANCE PROCEDURES POLICY AND ADOPT RESOLUTION NO. 18-1870 TO ADOPT A POLICY FOR PROCUREMENT MADE WITH FEDERAL FUNDS

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In May 2014, the City Council adopted a Financial Policy, which requires that each financial policy be updated every three years, reviewed by the Finance Committee, and considered by the City Council for final approval. After review by the Finance Committee and City Council at the June 13, 2018, Budget Workshop, the Office/Employee/Official Responsibility and Fraud Prevention Policy and Protocol, and the Tax Advantaged Bonds Post-Issuance Compliance Procedures were recommended to be updated.

The Office/Employee/Official Responsibility and Fraud Procedures were amended to include a paragraph to reflect that the Assistant City Manager may assign investigations to another qualified individual.

The Tax Advantaged Bonds Post-Issuance Compliance Procedures were amended to reflect the deletion of references to Build America Bonds and Tax Credit Bonds which, after federal tax reform, are no longer tax-advantaged bonds.

Included in this packet are the amended policies, which have been reviewed by the City Attorney.

The City of Agoura Hills is required to adopt a Policy for Procurement with Federal Funds. The City is adopting this procurement policy to adhere to the Uniform Guidance that became effective on December 26<sup>th</sup>, 2014. Organizations receiving federal funds are subject to the procurement guidelines of the Uniform Guidance (UG), formally 2 C.F.R 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. This policy must be implemented by July 1<sup>st</sup>. The policy outlines employee standards, contract inclusions, and types of procurement and its necessary steps for federal funds.

## **RECOMMENDATION**

Staff respectfully recommends the City Council amend the Office/Employee/Official Responsibility and Fraud Procedures Policy and the Tax Advantaged Bonds Post-Issuance Compliance Procedures Policy and adopt Resolution No. 18-1870 to adopt a policy for procurement with federal funds.

**Attachments:**

Office/Employee/Official Responsibility and Fraud Procedures Policies

Tax Advantaged Bonds Post-Issuance Compliance Procedures Policy

Resolution No. 18-1870

Policy for Procurement with Federal Funds



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**CITY OF AGOURA HILLS  
OFFICER/EMPLOYEE/OFFICIAL RESPONSIBILITY AND FRAUD  
PREVENTION POLICY AND PROTOCOL**

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**1. PURPOSE**

The City of Agoura Hills is committed to protecting its revenue, property, information, and other assets from any attempt, either by members of the public, contractors, vendors, agents, or its own employees, to gain financial or other benefits by deceit. It is also designed to protect its staff from false allegations.

This Policy and Protocol addresses specific guidelines and responsibilities regarding appropriate actions for detecting, reporting, and investigating fraud or other similar irregularities.

**2. APPLICABILITY**

This Policy and Protocol applies to Councilmembers, all employees of the City of Agoura Hills, and to employees of local boards, agencies, and commissions over which Council has authority to require general procedures to be followed.

**3. POLICY**

The City of Agoura Hills will identify and promptly investigate any possibility of fraudulent or related dishonest activities against the City of Agoura Hills and, when appropriate, pursue legal remedies available under the law.

The City of Agoura Hills will take appropriate disciplinary and legal actions against employees and/or entities, to include the possibility of termination of employment or contract, restitution, and forwarding information to the appropriate authorities for criminal prosecution, as appropriate.

This Policy and Protocol will attempt to clarify acts that are considered to be fraudulent, and describe the steps to be taken when fraud or other related irregularities are suspected or have occurred. This statement also includes the procedures to follow in accounting for missing funds, restitution, and recoveries.

#### **4. DEFINITION**

**Fraud:** For the purposes of this Policy and Protocol, fraud encompasses any array of irregularities and illegal acts characterized by intentional deception. Dishonest or fraudulent activities include, but are not limited to, the following:

- Forgery or alteration of documents (checks, promissory notes, time sheets, independent contractor agreements, purchase orders, etc.)
- Intentional misrepresentation of information by an individual
- Intentional misrepresentation of information on documents
- Misappropriation of funds, securities, supplies, or any other asset
- Unauthorized use, disappearance, or destruction of City property, equipment, materials or records
- Improprieties in the handling or reporting of money transactions
- Authorization or receipt of payments for goods not received or services not performed
- Authorization or receipt of payment for hours not worked
- Any claim for reimbursement of expenses that are not made for the exclusive benefit of the City
- Any apparent violation of Federal, State, or local laws related to dishonest activities or fraud
- Any similar or related activity

#### **5. MANAGEMENT RESPONSIBILITY**

Each department head is responsible for instituting and maintaining a system of internal control to provide reasonable assurance for the prevention and detection of fraud, misappropriations, and other irregularities.

Management should be familiar with the types of improprieties that might occur in their area and be alert to any indication that improper activity, misappropriation, or dishonest activity is or was in existence in his or her operational area.

Upon notification from an employee of suspected fraud, or if management has reason to suspect that a fraud has occurred, he/she will contact their immediate supervisor and the department head. The department head will contact the Assistant City Manager. If the Assistant City Manager position does not exist, the City Manager will designate an alternate position. If the Assistant City Manager is suspected of fraud, the employee should contact the City Manager, and the City Manager will conduct the investigation. If the City Manager is suspected of fraud, the City Attorney on behalf of the City Council, will conduct the investigation. If a

City Councilmember is suspected, the City Manager will conduct the investigation. The department head will also immediately contact the Sheriff's Department if he/she feels the situation warrants such action (for example, obvious theft has taken place, security is at risk, or immediate recovery is possible). After informing the Assistant City Manager of the matter, management will not attempt to conduct individual investigations, interviews, or interrogations.

Management will support and co-operate with the Assistant City Manager, other involved departments, and law enforcement agencies in the detection, reporting, and investigation of criminal acts, including prosecution of offenders.

The Assistant City Manager will have full and unrestricted access to all necessary City records and personnel. Upon completion of the investigation, including all legal and personnel actions, any records, documents, and other evidentiary material will be returned by the Assistant City Manager to the appropriate department(s).

All furniture and contents, including employee desks and computers, are open to inspection when there is a reasonable suspicion of a dishonest or fraudulent activity, which makes such inspection appropriate. There is no assumption of privacy in such cases. Every effort will be made to effectively recover any of the City's losses.

Great care must be taken in dealing with suspected dishonest or fraudulent activities to avoid the following:

- Incorrect accusations;
- Alerting suspected individuals/companies that an investigation is underway;
- Treating employees/third parties unfairly; or
- Making statements that could lead to claims of false accusations or other offenses. Employees who knowingly or negligently make false accusations may be subject to disciplinary action.

All participants in a fraud investigation will keep the details and results of the investigation confidential. However, the Assistant City Manager, in consultation with City Attorney, may disclose particulars of the investigation with potential witnesses/personnel if such disclosure would further the investigation.

Responsibilities of the manager in handling dishonest or fraudulent activities include the following:

- Do not contact the suspected individual to determine facts or demand restitution.

- Do not discuss the case, facts, suspicions, or allegations with anyone outside the City, unless specifically directed to do so by the Assistant City Manager or City Attorney.
- Do not discuss the case with anyone inside the City other than employees who have a need to know, such as the Assistant City Manager.
- Direct all inquiries from the suspected individual/company or his/her/its representative/attorney to the City Manager.
- Direct all inquiries from the media to the City Manager's Office. A proper response to such an inquiry might be, "I'm not at liberty to discuss this matter. Let me refer you to the City Manager's Office". The City Manager's Office will determine the appropriate media messages and identify an appropriate City spokesperson, as required.
- Take appropriate corrective and disciplinary action after consulting with the City Manager.

## **6. EMPLOYEE RESPONSIBILITIES**

When suspected fraudulent incidents or practices are observed by, or made known to, an employee, the following will be done:

- The incident or practice must be reported to his/her supervisor for reporting to the proper management official. When the employee believes the supervisor may be involved in the inappropriate activity, the employee will make the report directly to a higher level of management and/or the Sheriff's Department.
- The reporting employee will refrain from further investigation of the incident, confrontation with the alleged violator, or further discussion of the incident with anyone other than his/her supervisor, the Assistant City Manager/City Manager, and/or law enforcement personnel.

## **7. INVESTIGATION**

The Assistant City Manager will carry out an initial review. If the Assistant City Manager is suspected of fraud, the City Manager will conduct the initial review. After this review is completed, a determination of whether the suspected fraud warrants additional investigation by the Assistant City Manager will be made. As warranted, the Assistant City Manager will inform Risk Management of a pending investigation.

A prompt investigation will be conducted to include detailed analyses of available records. The audit investigation requires the full co-operation of the departmental

personnel. The Assistant City Manager will proceed as follows, if evidence is uncovered showing possible dishonest or fraudulent activities:

- The Assistant City Manager will discuss the findings and recommendations for prevention of future similar occurrences with management and appropriate administrators. Management is responsible for taking appropriate corrective actions to ensure adequate controls exist to prevent reoccurrence of improper actions.
- The Assistant City Manager will meet with Human Resources to determine if disciplinary actions should be taken.
- The Assistant City Manager will notify the City Manager.
- The Assistant City Manager will notify the Finance Committee as appropriate.
- If illegal activity appears to have occurred, the Assistant City Manager, in consultation with the City Attorney, will report the findings to the Sheriff's Department.
- The Assistant City Manager will contact Risk Management to coordinate the notification of insurers and the filing of insurance claims.
- The Assistant City Manager will report to the external auditors of the City all information relating to investigations of actual frauds.
- The Assistant City Manager may assign the investigation to another qualified individual (employee or non-employee). If the Assistant City Manager conducts the investigation, he or she normally will not serve in the human resources function or serve as the disciplinary authority. These functions will be assigned to or retained by others. Depending on the circumstances of the particular case, the Assistant City Manager may delegate the risk management function and reporting to external auditors to other employees. Where the Assistant City Manager assigns or delegates a function, the assignment or delegation will be documented in writing.

The Assistant City Manager is available and receptive to receiving relevant information on a confidential basis to the extent allowed by law. Individuals have the right to contact the Assistant City Manager directly whenever a dishonest or fraudulent activity is suspected.

## **8. RELATED POLICIES**

This Policy and Protocol is designed to augment any other corporate policies containing related information. It does not replace or preclude them. To the extent that this Policy and Protocol may conflict with any other corporate policies containing related information, this Policy and Protocol will take precedence to the extent only of such conflict.

## **9. COMPLIANCE**

Failure of staff to comply with this Fraud Policy and Protocol could result in disciplinary action.





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**AMENDED AND RESTATED  
TAX-ADVANTAGED BONDS POST-ISSUANCE COMPLIANCE PROCEDURES**

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**PURPOSE**

**1. BACKGROUND AND TRAINING**

Bonds that receive preferential treatment under federal law are commonly referred to by the Internal Revenue Service as "tax-advantaged bonds". These bonds are issued by or on behalf of state and local governments, such as the City of Agoura Hills (and its related public entities, such as the Agoura Hills Financing Authority). These bonds are subject to federal tax requirements both at the time the bonds are issued and for as long as they remain outstanding. An issuer's (or other party's) failure to comply with any applicable federal tax requirement with respect to these bonds jeopardizes their preferential treatment.

While compliance with many federal tax requirements occurs at closing, other federal tax requirements require on-going monitoring after the issuance of the bonds. These requirements include filing a Form 8038 information return (8038-G for fully tax-exempt bonds, 8038-GC for fully tax-exempt bonds with an issue price of less than \$100,000, and 8038 for tax-exempt private activity bonds), and the issuer having reasonable expectations of on-going, post-issuance compliance.

Post-issuance federal tax requirements generally fall into two categories: (1) the use of proceeds and the use of bond-financed property; and (2) arbitrage yield restriction on investments and rebate. Use requirements require monitoring of the various direct and indirect uses of bond-financed property over the life of the bonds and calculations of the percentage of nonqualified uses. Arbitrage requirements also require monitoring over the life of the bonds to determine whether both the yield on investments acquired with bond proceeds are properly restricted and whether the City must file a Form 8038-T to pay a rebate or a yield reduction payment.

Post-issuance compliance procedures will help the City monitor compliance as long as the bonds remain outstanding and improve the City's ability to identify noncompliance and prevent violations from occurring, or timely correct identified violations, to ensure the continued tax-advantaged status of the bonds.

The designated officer or employee (described in Section 2.A, below) and anyone assigned particular responsibilities in connection with the procedures described below must read the certificate regarding compliance with certain tax matters (commonly referred to as the "tax certificate") that is executed by the City (or a related public entity) in connection with each bond issue for a more complete explanation of the matters described in these Procedures. In addition, the designated officer or employee and anyone assigned particular responsibilities should discuss these matters with bond counsel.

## 2. GENERAL ADMINISTRATION

A. Responsible Officers or Employees. The City Manager will designate the officer (e.g., the Finance Director) who will be responsible for compliance with each of the procedures set forth below. The City Manager may designate other employees who will also be responsible for such compliance. The City Manager will notify the current holder of that office, or the employee, of the responsibilities and provide that person a copy of these Procedures. The holder of the office, or the employee, may in turn designate other officers or employees and assign to them particular responsibilities for certain of these Procedures. Qualified consultants may also assist in conducting the compliance procedures. The City Manager will be notified in writing of all such designations and assignments under this Section or under the following Section 2.B.

B. Reassignment of Responsibilities. Upon the transition of a designated officer or employee, the City Manager will advise the new officer or employee of the responsibilities under these procedures. If officer or employee positions are restructured or eliminated, the City Manager, or his or her designee, will reassign responsibilities as necessary to ensure that all of the procedures listed below have been appropriately assigned.

C. Periodic Reviews. The designated officer or employee will conduct periodic reviews of compliance with these procedures and with the terms of any existing tax certificate relating to outstanding tax-advantaged bonds to determine whether any violations have occurred. Such periodic reviews will occur at least once every six months. In the event that violations have occurred, bond counsel will be contacted immediately so that violations can be remedied through the remedial actions set forth in Section 1.141-12 of the Treasury Regulations, the Voluntary Closing Agreement Program described in IRS Notice 2008-31, or further guidance as may be provided by the IRS. Where necessary, violations will be reported to the IRS by submitting a VCAP request within 90 days after identification of the violation.

D. Changes or Modifications to Bond Terms. If any change or modification to the terms of tax-advantaged bonds is contemplated, the designated officer or employee will immediately contact bond counsel.

E. Recordkeeping. For each issue of tax-advantaged bonds, the designated officer or employee will:

(1) maintain a copy of the transcript of the documents relating to the bonds.

(2) maintain records of all facilities and other costs (e.g., issuance costs, credit enhancement fees, and capitalized interest) and uses (e.g., deposits to project funds and reserve funds) for which bond proceeds were spent or used (in the case of a qualified private activity bond, the City will ensure that any conduit borrower will be responsible for providing the City with this information);

(3) maintain records of investments and expenditures of bond proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and yield reduction payments, and any other records relevant to compliance with arbitrage restrictions (in the case of a qualified private activity bond, the City will ensure that the borrower will be responsible for providing the City with this information in the event it is not otherwise available to the City);

(4) maintain all records described in these Procedures while any bonds of the issue are outstanding and during the three-year period following the final maturity or redemption of the bond issue or, if later, while any bonds that refund bonds of that original issue are outstanding and for the three year period following the final maturity or redemption date of the latest refunding bond issue; and

(5) maintain copies of all of the following contracts or arrangements with non-governmental persons or organizations or with the federal government: (a) the sale of any bond-financed facility; (b) the lease of any bond-financed facility; (c) management or service contracts relating to a bond-financed facility; (d) research contracts involving research undertaken in a bond-financed facility; and (e) any other contracts involving "special legal entitlements" (such as naming rights or exclusive provider arrangements) with respect to a bond-financed facility.

### 3. IRS INFORMATION RETURN FILING

In cooperation with bond counsel, the designated officer or employee will ensure that the Form 8038-G (or other applicable Form 8038) is timely filed (on or before the 15th day of the second calendar month after the end of the calendar quarter in which the bonds were issued) with respect to each tax-advantaged bond issue, including any required schedules and attachments.

### 4. INVESTMENT AND EXPENDITURE OF BOND PROCEEDS AND REBATE

A. Track Investments and Expenditures. The designated officer or employee will ensure the existence of an established accounting procedure for tracking the investment and the timely expenditures of bond proceeds, including investment earnings.

B. Reimbursement. Upon issuance of the bonds, the designated officer or employee will allocate bond proceeds to reimbursement of prior expenditures (assuming, if required, an appropriate declaration of intent to reimburse has been adopted). In the case of qualified private activity bonds, the designated officer or employee may rely on information provided by the conduit borrower.

C. Final Allocations. The designated officer or employee will ensure that a final allocation of bond proceeds (including investment earnings) to qualifying expenditures is made if bond proceeds are to be allocated to project expenditures on a basis other than "direct tracing" (direct tracing means treating the bond proceeds as spent as shown in the accounting records for bond draws and project expenditures). This allocation must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years and 60 days

after the issuance date of the bonds or 60 days after the bond issue is retired. In the case of qualified private activity bonds, the designated officer or employee may rely on information provided by the conduit borrower, which will be required to provide such information within the timeframe described in the preceding section.

D. Timely Expenditure of Bond Proceeds. Mindful of the expectations regarding the timing of the expenditures of bond proceeds set forth in the tax certificate, the designated officer or employee will monitor expenditures of bond proceeds, including investment earnings, against issuance date expectations for satisfaction of three-year (or five-year) temporary period from yield restriction on investment of bond proceeds, and to ensure that proceeds and investment earnings are allocated to expenditures for the public improvements or other qualified expenditures described in the tax certificate. In the case of qualified private activity bonds, the conduit borrower will be required to comply with this section.

E. Yield. The designated officer or employee will make note of the "yield" of the bond issue, as shown on the applicable Form 8038G, or other applicable Form 8038.

F. Temporary Periods and Yield Restriction. The designated officer or employee will review the tax certificate to determine the "temporary periods" for the bond issue, during which periods various categories of gross proceeds of the bond issue may be invested without restriction as to yield.

G. Investment of Proceeds and Yield Restriction. The designated officer or employee will ensure that bond proceeds are not invested in investments with a yield above the bond yield following the end of the applicable temporary period unless yield reduction payments are permitted to be made.

H. Bidding Requirements. If purchasing investments other than publicly traded securities for immediate delivery (for example, a guaranteed investment contract or certificates of deposit), the designated officer or employee will consult with bond counsel as to whether the investments of bond proceeds satisfy regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintain records to demonstrate satisfaction of such safe harbors. In the case of qualified private activity bonds, the conduit borrower will be required to comply with this section.

I. Credit Enhancement and Hedging Transactions. The designated officer or employee will consult with bond counsel before engaging in credit enhancement or hedging transactions with respect to a bond issue. The designated officer or employee will maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions.

J. Debt Service Fund. After all proceeds of a bond issue have been spent, the designated officer or employee will ensure that the debt service fund meets the requirements of a "bona fide debt service fund," i.e., one used primarily to achieve a proper matching of revenues with debt service that is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of (i) the

investment earnings on the fund for the immediately preceding bond year; or (ii) one-twelfth of the debt service on the bond issue for the immediately preceding bond year. To the extent that a debt service fund qualifies as a bona fide debt service fund for a given bond year, the investment of amounts held in that fund is not subject to yield restriction for that year. The designated officer or employee will consult with bond counsel before creating separate additional funds that are expected to be used to pay debt service on the bonds. In the case of qualified private activity bonds, the City will ensure that the conduit borrower is required to comply with this section.

K. Reserve Fund. The designated officer or employee will ensure that amounts invested in any reasonably required reserve fund do not exceed the least of (each determined at the time of issuance of the bonds): (i) ten percent of the stated principal amount of the bonds (or the sale proceeds of the bond issue if the bond issue has original issue discount or original issue premium that exceeds two percent of the stated principal of the bond issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual debt service on the bond issue; or (iii) 125 percent of average annual debt service on the bond issue. The designated officer or employee will consult with bond counsel before creating any separate additional funds or accounts that will secure or provide payments of debt service on the bonds.

L. Gifts for Bond-Financed Projects. Before beginning a campaign that may result in gifts that will be restricted for use relating to a bond-financed facility (or, in the absence of such a campaign, upon the receipt of such restricted gifts), the designated officer or employee will consult with bond counsel to determine whether replacement proceeds may result.

M. Performance of Rebate Calculations. Subject to the small issuer exception and the exceptions described in the tax certificate, investment earnings on bond proceeds at a yield in excess of the bond yield generally must be rebated to the United States. The designated officer or employee will ensure that rebate calculations will be timely performed and payment of rebate amounts, if any, will be timely made. Rebate payments are generally due 60 days after the fifth anniversary of the issuance date of the bond issue, then in succeeding installments every five years. The final rebate payment is due 60 days after retirement (or early redemption) of the last bond of the issue. In the case of qualified private activity bonds, the City will ensure that the conduit borrower is required to comply with this section.

O. Rebate Consultant. The designated officer or employee will engage the services of an experienced rebate consultant to undertake rebate calculations described above for each bond issue.

P. Spending Exceptions. If the six-month, 18-month, or 24-month spending exceptions from the rebate requirement apply to the bond issue, the designated officer or employee will ensure that the spending of bond proceeds is monitored prior to semi-annual spending dates for the applicable exception.

Q. Follow-up on Rebate. After all bond proceeds have been spent, the designated officer or employee will ensure compliance with rebate requirements for any reserve fund and any debt service fund that is not exempt from the rebate requirement. In the case of qualified private activity bonds, the City will ensure that the conduit borrower is required to comply with this section.

R. Filing of 8038-T. The designated officer or employee will make rebate and yield reduction payments timely and file Form 8038-T.

## 5. PRIVATE BUSINESS USE

A. Private Business Use. Use of bond proceeds or bond-financed property by a nongovernmental person (including the federal government) in furtherance of a trade or business activity is considered private business use. Any activity carried on by other than a natural person (individual acting as a member of the general public) is treated as a trade or business. Indirect uses of bond proceeds may also be considered private business use. For example, a facility is treated as being used for a private business use if it is sold or leased to a nongovernmental person and the nongovernmental person's use is in a trade or business. The designated officer or employee will analyze any private business use of bond-financed facilities and, for each issue of bonds, determine whether there is or may in the future be more than five percent private business use. If so, the designated officer or employee will immediately contact bond counsel to discuss the private business use limit, including whether the alternative ten percent limit is applicable.

B. Management and Service Contracts. Management or service contracts between governmental entities and nongovernmental persons (private parties) under which the nongovernmental person receives compensation or revenue for services provided with respect to a bond-financed facility may result in private business use. Before entering into any new management agreement or service agreement relating to bond-financed facilities, the designated officer or employee will immediately contact bond counsel to review any such agreement to determine whether it may result in private business use.

C. Special Legal Entitlements. Before entering into any agreement providing special legal entitlements relating to a bond-financing facility, such as naming rights or an exclusive provider agreement, the designated officer or employee will immediately contact bond counsel to review such agreement to determine whether it may result in private business use.

**RESOLUTION NO. 18-1870**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
AGOURA HILLS, CALIFORNIA, ADOPTING POLICY FOR  
PROCUREMENT WITH FEDERAL FUNDS**

WHEREAS, organizations receiving federal funds are subject to the procurement guidelines of the Uniform Guidance ("Uniform Guidance"), formally 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

WHEREAS, the City of Agoura Hills has prepared this Procurement Policy for Federal Funds in order to comply with the requirements of the Uniform Guidance.

WHEREAS, the City Council Finance Subcommittee and City Council reviewed the Policy for Procurement with Federal Funds.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Agoura Hills as follows:

Section 1. The City Council hereby finds that the Policy for Procurement with Federal Funds is necessary, because the Policy meets the Uniform Guidance and federal government standards, as well as protects the interests of the City of Agoura Hills.

Section 2. The City Council hereby adopts the Policy for Procurement with Federal Funds in Exhibit "A", attached hereto and incorporated by reference.

PASSED, APPROVED, AND ADOPTED this 27th day of June, 2018, by the following vote to wit:

AYES:        ()  
NOES:        ()  
ABSTAIN:    ()  
ABSENT:     ()

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William D. Koehler, Mayor

ATTEST:

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Kimberly M. Rodrigues, MMC, City Clerk



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**CITY OF AGOURA HILLS  
POLICY FOR PROCUREMENT WITH FEDERAL FUNDS**

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In addition to Chapters 7 (Purchasing System) and 11 (Public Projects) of Article II of the Agoura Hills Municipal Code, this policy shall apply to the awarding of contracts and sub-grants by the City that are funded, in part or in whole, by federal grants or funds pursuant 2 CFR Subtitle A, Chapter 2, Part 200, Subpart D, Sections 200.317-200.326.

**I. GENERAL PROCUREMENT STANDARDS**

- A. Code of Conduct.** As representatives of the City of Agoura Hills, all employees are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity and the use of good judgment. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the City. The following Code of Conduct shall govern the performance, behavior and actions of the City, including employees, directors, appointed or elected officials, volunteers, or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts:
1. No employee, director, appointed or elected official, volunteer, or agent of the City shall participate in the selection, award, or administration of contracts supported by a federal award if a conflict of interest is real or apparent to a reasonable person.
  2. Conflicts of interest may arise when any employee, officer, or agent of the City, 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 real or apparent financial or other interest in or a tangible personal benefit from a firm considered for the contract.
  3. No employee, director, appointed or elected official, volunteer, or agent of the City shall do business with, award contracts to, or show favoritism toward a member of his or her immediate family, spouse's family, or to any company, vendor, contractor, or parties to subcontractors who either employ or has any relationship to a family member; or award a contract or bid which violates the spirit or intent of federal, state and local procurement laws and policies established to maximize free and open competition among qualified vendors.



4. The City's employees, directors, appointed or elected officials, volunteers, or agents shall neither solicit nor accept gratuities, favors, gifts, consulting fees, trips, or anything having a monetary value in excess of twenty-five dollars (\$25.00) from a vendor, potential vendor, family or employees of a vendor, contractor or parties to subcontractors.
5. Disciplinary measures for violations of the Code of Conduct by employees, directors, appointed or elected officials, volunteers, or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts could lead to disciplinary measures, up to and including possible termination of employment.

## **B. Solicitation Procedures**

1. Acquisition of unnecessary or duplicative items must be avoided. Consideration should be given to consolidating or dividing procurements to obtain a more economical purchase. When appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
2. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the City 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.
3. Procuring federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs shall be utilized.
4. Value engineering clauses may be used 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.
5. Contracts shall only be awarded 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.
6. Records will be maintained 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. The City Clerk will be the repository for said records and shall be maintained for period of no less

than seven (7) years.

7. Time and material type contracts (open-ended) may be used only after a determination that no other contract is suitable. Time and material type contract means a contract where the cost to the City is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expense, and profit. Each time and material contract will set a ceiling price that the contractor exceeds at its own risk. A higher degree of oversight is required in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
8. The City alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the City of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of the City unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### **C. Competition**

1. All procurement transactions must be conducted in a manner providing full and open competition. 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 will 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. Procurements shall be conducted 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 will 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 standard 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 relevant requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.
4. Bids and proposals shall identify all the requirements which the offerors must fulfill and all other factors to be used in evaluation bids or proposals

**D. Methods of Procurement to be followed.** The City shall use one of the following methods of procurement:

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 the micro-purchase threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and adjusted periodically for inflation. To the extent practicable, the City must 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. As of the date of this policy, the micro-purchase threshold is \$3,000.
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 as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and periodically adjusted for inflation. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. As of the date of this policy, the simplified acquisition threshold is \$150,000. For purchases exceeding twenty five thousand (\$25,000), City Council approval is required.

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 to all the material terms and conditions of the invitation for bids, is the lowest in price.

- a. For sealed bidding to be feasible, the following conditions should be present:
  - (1) A complete, adequate, and realistic specification or purchase description is available;
  - (2) Two or more responsible bidders are willing and able to compete effectively for the business; and
  - (3) The procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally based on price.
- b. If sealed bids are used, the following requirements apply:
  - (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
  - (2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond;
  - (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
  - (4) 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 shall 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
  - (5) If there is a sound documented reason, any or all bids may be rejected.

4. **Procurement by Competitive Proposals:** Purchases over the Simplified Acquisition threshold, which is currently \$150,000. This procurement method requires formal solicitation, fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors. 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 methods for conducting technical evaluations of the proposals received and for selecting recipients may include, but not limited to: oral interviews, references, past performance, availability to perform work, and certifications as determined by project scope.
- d. Any response that takes exception to any mandatory items in this proposal process may be rejected and not considered;
- e. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,
- f. Competitive proposal procedures may be used 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.
- g. Noncompetitive proposals: Also known as sole-source procurement, this may be appropriate only when one or more of the following criteria are met:
  - The item is available only from a single source;
  - The public emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
  - After solicitation of a number of sources, competition is determined inadequate.

**E. Contract Cost and Price.** A cost or price analysis shall be performed in connection with every procurement action in excess of the Simplified Acquisition threshold (\$150,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates shall be made prior to receiving bids and proposals.

1. Profit shall be negotiated as a separate element of the price for each contract in which there is a 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.
2. 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 Subpart E- Cost Principles of Part 200- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
3. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall be used.

**F. Federal Awarding Agency or Pass-Through Entity Review.**

1. The City 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. However, if the City desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
2. The City will 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:
  - a. Procurement procedures or operations fails to comply with the procurement standards in this part;
  - b. The procurement is expected to exceed the Simplified Acquisition Threshold (\$150,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - d. 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

- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- 3. The City is exempt from the pre-procurement review in paragraph 2 of this section if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- 4. The City 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 in order 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;
- 5. The City 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 City that it is complying with these standards. The City must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### **G. Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (\$150,000), the federal awarding 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 minimum requirements must be as follows:

- 1. 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;
- 2. A performance bond on the part of the contractor for 100 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; and,
- 3. A payment bond on the part of the contractor for 100 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.

## **H. Contract Provisions**

All contracts using federal funding shall comply with the following as applicable:

1. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. All contracts, when funded in whole or partly by monies derived from the federal government (either directly or indirectly), shall contain must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
4. Davis-Bacon Act. Construction contracts in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148). Contractors must be required to pay laborers and mechanics wages not less than the prevailing wage as determined by the Secretary of Labor and must be required to pay wages not less than once a week. Each bid solicitation published by the City must contain the current prevailing wage determination. Any award of the contract must be conditioned on contractor's acceptance of that wage determination and suspected or reported violations of this act shall be immediately reported to the Federal awarding agency.
5. Copeland "Anti-Kickback" Act. Applies to construction contracts in excess of \$2,000. It prohibits kickbacks in construction contracts funded with Federal monies. Contractors and subcontractors or subrecipients shall be prohibited from inducing 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 and suspected or reported violations shall be immediately reported to the Federal awarding agency.
6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the City in excess of \$100,000 that



involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under
8. **Clean Air Act & Federal Water Pollution Control Act.** Contracts and sub grants in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Suspected or reported violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
9. **Debarment and Suspension.** A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
10. **Byrd Anti-Lobbying Amendment.** Contractors that apply or bid for an award of \$100,000 must certify that they will not and have not used federal 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. Contractors must

also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

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

All necessary affirmative steps will be taken to assure that minority business, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps 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.