

RESOLUTION 2021-1
A RESOLUTION ADOPTING WESTON COUNTY PROCUREMENT POLICIES AND PROCEDURES FOR FEDERALLY FUNDED PROJECTS

WHEREAS, proper procurement practices are essential to ensure fairness and that the best products and services are obtained at the best price; and

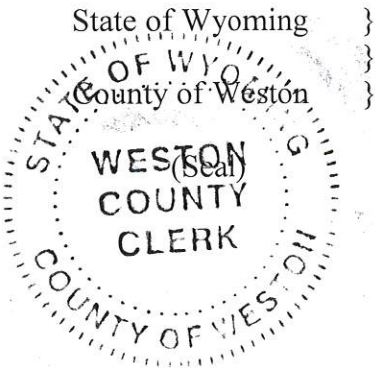
WHEREAS, Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (“Uniform Guidance”) now requires the County to adopt a procurement policy for federal projects; and


WHEREAS, the Board of Commissioners resolves to adopt the attached *Weston County Procurement Policies and Procedures for Federally Funded Projects*, with an effective date of February 16, 2021.

DATED this 16th day of February, 2021 in Weston County, Wyoming

BOARD OF COUNTY COMMISSIONERS IN AND FOR WESTON COUNTY, WYOMING

BY 
MARTY ERTMAN, CHAIRMAN




BECKY HADLOCK, WESTON COUNTY CLERK
My term of office expires January 2, 2023

**WESTON COUNTY
PROCUREMENT POLICIES AND PROCEDURES
FOR FEDERALLY FUNDED PROJECTS**

I. PROCUREMENT POLICIES AND PROCEDURES USING FEDERAL FUND MONIES

The primary purpose of the Federal Procurement Regulation is to insure full and open competition regardless of the procurement method. The following regulations shall apply to all Weston County ("County") projects which are funded in full or in part by federal funds.

All procurements must meet all standards set forth in program regulations and the OMB Super Circular 2 CFR 200, and all Federal requirements following 2 CFR Part § 200.317 to 200.326 Procurement Standards as outlined in the OMB Super Circular Guidance for Federal Awards.

The County's contracts will contain the applicable provisions described in Title 2 U.S. Code of Federal Regulations (CFR) Part 200 Appendix II – Contract Provisions for non-Federal Entity Contracts Under Federal Awards. The County Attorney will review the contracts to ensure compliance with the applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

The County office shall submit its proposed contract to the County Attorney for review. The County Attorney shall review the contract as to form, process, and content. After a proposed contract has been approved as to form, process, and content by the County Attorney, the County office shall submit the proposed contract to the County Commissioners for consideration.

II. GENERAL GUIDELINES

Purchases and contract awards must be made only to responsive and responsible bidders.

Responsive means that the bidder and their offer meet the requirements of the procurement.

Responsible means that the bidder has the means to execute the procurements – they have the ability to provide the goods and/or services required.

The County is responsible for ensuring that allowable costs are net of all discounts, rebates, and applicable credits, and also that all expenditures are necessary, reasonable, and allocable.

The County must have a clear and accurate description of the material, product, or service to be procured. All requirements, which must be fulfilled, have to be identified and cannot contain features which unduly restrict competition.

When it is impractical or uneconomical to make clear and accurate descriptions of the technical requirements, a “**brand name or equal**” description may be used as a means to define the performance or other requirements. The specific features of the named brand, which must be met by suppliers, shall be clearly stated per 2 CFR 200.319(c) (1).

Restricting procurement to a brand name or a specific product is not permitted; however, situations do arise when the County has a compelling need or reason to purchase a brand specific item. The county would then need to document all reasons for this requirement but must still maximize competition even in the brand specific procurements.

The County will take all necessary affirmative steps to assure the minority business, women’s business enterprises, and labor surplus area firms are used when possible. 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 service 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.

III. PRE-PROCUREMENT PROCESS

1. Identify what will be purchased.
2. Estimate the cost and determined the **purchase type**.
3. Identify **procurement method** to be used.
4. Follow the proper **purchase procedures**.

IV. PURCHASE TYPES

- **Micro purchase**-Any purchase below the Federal Threshold which is currently Three Thousand Five Hundred Dollars (\$3,500) may be awarded without’ soliciting competitive quotes, if the County considers the price reasonable.

- **Small purchase**-Purchases that have a total value that exceeds the Federal Threshold (\$3,500) but are less than an equal to Ten Thousand Dollars (\$10,000).
 - Do not require a formal procurement process; however, the County shall make the purchase on a competitive basis and price or rate quotations will be obtained from an adequate number of qualified sources.
- **Competitive bid purchase**-Any total purchase that exceeds Ten Thousand Dollars but less than Fifty Thousand Dollars (\$50,000).
 - Do not require a formal procurement process; however, the County shall make the purchase on a competitive basis (soliciting more than two vendors if possible).
- **Formal procurement**-Total purchase that cost Fifty Thousand Dollars (\$50,000) or more.

V. **PROCUREMENT METHODS** – There are several ways to meet the fundamental principles of procurement-fair, open, and competitive purchasing.

A. Request for Information (RFI)-An RFI is used when the County is unsure what to include in the procurement and needs to identify the range of possibilities available. The RFI must be open to all potential respondents and can be used to prequalify vendors moving forward. An Award cannot be made from the RFI, but must issue a subsequent IFB or RFP that is more exact.

B. Request for Quotation (RFQ)-A non-formal method. In some cases it is simply calling several vendors and asking for a price quote on goods or services. The County must keep adequate documentation (vendor name, contact name, phone number, time, date, and quote amount for each vendor). A RFQ is commonly used when you know what you want but need information on how vendors would meet your requirements and/or how much it will cost.

- RFQ may be used for **micro-purchases** (solicit information from at least one vendor), **small purchases** (solicit information from at least two vendors if possible, and **competitive bid purchases** (solicit information to more than two vendors if possible).
- Micro-purchases and small purchases may use phone quotes.
- Competitive bids-must use a written Request for Quotation.

C. Micro Purchase Procedure Micro purchases (under the current federal threshold) can be purchased without soliciting competitive quotes if the price is considered reasonable. To the extent feasible County staff must distribute the micro-purchases equitably among qualified suppliers.

1. Call or check prices of at least one vendor.
2. Use different vendors when the value/quality is comparable to ensure competition.

3. Make purchase-After a pre-approved Requisition (under \$500) or pre-approved voucher (\$500 or over) is received.
4. Keep Procurement Documentation-Attach a copy of the documentation to the Requisition or voucher.

D. Small (can be via phone) and Competitive Purchase Procedures (must be written)

1. Solicitation documents
 - a. Describe what goods or services are needed
 - b. Due dates
 - c. Other relevant factors
2. Contact an adequate number of available, qualified sources to achieve competition (if possible). Solicit two vendors for Small Purchases and Three for Competitive Purchases.
 - a. A non-responsive from a vendor counts as a solicitation (be sure to document).
3. Receive price/rate quotes-evaluate quotes
4. Make purchase-after a pre-approved voucher has been received.
5. Contract is to be issued as result of Procurement for Competitive Purchases.
6. Keep Procurement Documentation-Attach a copy of the documentation to the voucher.

E. Invitation for Bid (IFB)-Formal method used when the only significant point of differentiation between vendors is the price. An IFB must have clear, concise specifications and should describe the minimum standards expected of a respondent in measurable terms. Bids will be solicited from an adequate number of known suppliers providing them with sufficient time to respond prior to the date set for the bid opening. Bids shall be sealed and require a fixed price contract with or without adjustment factors.

- The **sealed bids** will be publicly opened at the time/place specified in the IFB. The contract will be awarded to the bidder whose bid conformed to all the terms and conditions of the IFB and has the lowest bid.
 - Can award only a Fixed Price Contract and the successful bidder can be determined only on the basis of price.
 - Must have adequate and realistic specifications or purchase descriptions
 - Must provide sufficient time for response
 - Must have at least two or more responsible bidders that are willing and able to compete effectively

F. Request for Proposal (RFP)-Formal method where other factors than price may be considered in making an award when using a RFP. Price must remain the primary consideration when awarding the contract under this method. The RFP identifies the goods, products, and/or services needed by the County and all significant evaluation

factors. Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids.

- RFP must identify all evaluation factors and their relative importance (number of points). The contract will be awarded to the proposer that is most advantageous with price (this being given the highest evaluation weight) and all other factors being considered.
 - Awarded contract may be either **Fixed Price, Cost Reimbursable, or combination of the two.**
 - Generally used when conditions are not appropriate for the use of Sealed Bid.

G. Formal Purchase Procedures

If the purchase amount will cost \$50,000 or more, the County will contract through a formal bid process. No contract shall be divided for the purpose of avoiding this procedure. A call for bids shall be published at least 2 times in a newspaper of general circulation in the County, as well as in a newspaper generally circulated state-wide.

- More rigorous and perspective:
 - Invitation for Bids (IFB) i.e. Competitive Sealed Bidding
 - Request for Proposals (RFP) i.e. Competitive Negotiation
 - Allows the identification of evaluation factors and their relative importance
- Contract is to be issued as result of Procurement

1. Identify allowable methods-IFB or RFP (See Procurement methods above) Prepare Solicitation and contract documents-mailed to prospective bidders, posted on web site, and made available at the central office.

Potential bidders may provide information for the specifications but cannot prepare documents

Identical bid specifications must be provided to all potential vendors. This must include all important information such as delivery schedule, quantities, product specifications, and purchase conditions.

- a. **IFB**-Must have complete, adequate, and realistic specifications or purchase descriptions.
- b. **RFP**-Scoring (evaluation) criteria must be included in the RFP.
- c. Some of the situations considered to be restrictive of competition include but are not limited to:
 - i. Placing unreasonable requirements on contractors in order for them to qualify to do business.
 - ii. Requiring unnecessary experience and/or excessive bonding.
 - iii. Noncompetitive pricing practices between contractors or between affiliated companies.
 - iv. Organizational conflicts of interest.
 - v. 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;

- vi. Any arbitrary action in the procurement process.
 - vii. The use of state or local geographical preferences in the evaluation of bids or proposals.
2. **Advertise Bids**-Bids/Proposals must be solicited to as many bidders as possible. Published 2 times in local newspaper of general circulation and 2 times in a newspaper generally circulated state-wide. Solicitations will be sent directly to known vendors.
 - a. **IFB**-Must have two or more responsible bidders.
 - b. **RFP**-Must be solicited to an adequate number of qualified bidders to ensure competition.
3. **Clarification to bids**-Clarifications, addendums, and questions must be provided to all prospective bidders during the solicitation phase.
4. **Receive Bids**-Must be received by a specified date and time. May be accepted electronically when specified in bid advertisement.
 - a. IFB bids will be publicly opened at a predetermined time and place as stated in the IFB.
5. **Evaluate Submissions**-Measure and document why one company's response to a particular criterion is better than another using the advertised scoring system.
 - a. **IFB**-Based on lowest price only.
 - b. Scoring for RFP (*See How to Score Proposals*)-Not to be done publicly
 - i. Clearly list the factors that will be used to evaluate and determine the winner of the bid. *IFBs are based only on price and are publically opened.*
 - ii. Evaluation scores should reflect their importance; therefore, factors should be weighted.
 - iii. Price should always have the highest weight.
6. **Award contract**-A recommendation shall be made to the Commissioners at its next regular meeting to accept/deny contract.
 - a. Any or all bids may be rejected but can only be rejected for sound, documented reasons.
 - b. **IFB**-A firm, fixed price contract award will be made in writing to the lowest priced, responsive, and responsible bidder. When setting the price, consideration must be given to all discounts, rebates, credits, or additional costs by the bidder.
 - c. **RFP**-A Fixed Price or Cost Reimbursable (**or combination**) award will be made to the responsive and responsible party whose proposal is most advantageous. Price and other factors must be considered with price having the highest weight.
 - d. Notification is to be sent to all bidders.
7. **Execute the contract**-All federal fund purchase contracts must go through one of the applicable aforementioned purchasing agents.

- a. No contract shall be for more than 5 years and should have an annual renewal when in place for longer than one year.

8. **Make the purchase**-After a pre-approved voucher is received.

9. **Administer contract**-*See contract administration*

10. **Maintain documentation**-*See Documentation*

H. HOW TO SCORE PROPOSALS (RFP):

The County shall ensure that cost is the primary factor for award.

- A point system, percentage based system, or a different weighed system may be used.
- The solicitation must clearly define and describe the evaluation criteria to be used.
- The method chosen cannot unreasonably limit free and open competition.

VI. CONTRACT ADMINISTRATION

The County will maintain a contract administration system which will ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The applicable department head, with the assistance of the County Attorney, shall review all aspects of any contractor bid documents, expenditures, processes, and procedural aspects to ensure compliance with all federal, state, and County regulations.

The applicable department shall collect financial information with the frequency required by the terms and conditions of the Federal award and provide to the Federal awarding agency for effective monitoring of the Federal award.

The County shall have the right to monitor all Project related activities of Contractor. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe personnel in every phase of performance of the Project.

VII. DOCUMENTATION

The County shall retain all required records for at least three years after final payments and all pending matters have been closed and completed. The County shall comply with all record retention requirements contained within 2 CFR 200.333.

Documentation to be retained shall include all solicitation documents, responses, evaluation records, and contracts. These records should detail the history of any procurement and should also include, but are not limited to, the following:

- A. rationale for the method of procurement;
- B. selection of contract type;
- C. contractor selection or rejection; and
- D. the basis for the contract price

VIII. TERMINATION:

- a. Generally. The County may terminate a contract without cause if it determines that such termination is in the County's best interest. The County shall effect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least seven (7) calendar days prior to the effective date of termination. In the event of such termination by the County, the County shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by the County.
- b. For Cause. If, through any cause, Contractor fails to fulfill its obligations under the contract in a timely and proper manner, violates any provision of the contract or violates applicable law, the County shall have the right to terminate the contract for cause immediately upon written notice of termination to Contractor. In the event of such termination by the County, the County shall be liable to pay the Contractor for Services performed as of the effective date of termination, but shall not be liable to the Contractor for anticipated profits. Contractor shall not perform any additional Services following the receipt of notice of termination. Notwithstanding the forgoing, Contractor shall not be relieved of liability to the County for any damages sustained by the County by virtue of any breach of the contract, and the County may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the County from Contractor is determined.

IX. BID SPECIFICATIONS

County contracts will not be awarded to any potential vendor who writes any of the bid specifications, the solicitation documents, or any of the contract language. Identical bid specifications and/or request for proposals will be provided to all potential vendors.

X. GEOGRAPHIC PREFERENCE

No Geographic Preference (advantage based on location) is allowed with federal funds.

XI. DEBARMENT AND SUSPENSION

For all contracts to be paid with Federal assistance, Weston County will obtain verification regarding debarment, suspension, ineligibility, and voluntary exclusion.

A contract award must not be made with parties listed on the government exclusions in the System for Award Management (SAM) <http://www.sam.gov>.

XII. STANDARD OF CONDUCT

County maintains the following code of conduct for any employees engaged in award and administration of contracts supported by Federal Funds:

- No County employees will engage in any procurement when there is a conflict of interest, real or perceived, and County employees cannot solicit or accept any gratuities, favors or monetary value from prospective vendors
- No County employee shall participate in the selection, award or administration of a contract when any of the following person have a financial or other interest in or a tangible personal benefit in the firm considered for the contract:
 - The employee
 - Any member of his/her immediate family
 - People with whom there is an affectionate personal relationship
 - An organization which employs or is about to employ any of the above
- County employees will behave with the utmost integrity and never be self-serving, be fair in all aspects of the procurement process, be alert to conflicts of interest, and avoid any compromising situations.
- Employees found to be in violation of this policy are subject to disciplinary action. Based on the severity of the infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, or termination.

XIII. DISCOUNTS, REBATES, CREDITS

County will verify that all federal contracts and procurements are net of all applicable discounts, rebates, and credits. All contracts will maintain records and source documents in support of all costs, discounts, rebates, and credits.

XIV. RECORD RETENTION:

The County will retain all records for three years after final payments and all pending matters have been closed and completed. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, shall have the right of access to any documents, papers, or other records of the County which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the County's personnel for the purpose of interview and discussion related to such documents. The rights of access last as long as the records are retained.

XV. BID PROTEST PROCEDURES

Any bidder, person, or entity may file a bid protest with County. The protest shall specify the reasons and facts upon which the protest is based and shall be filed, in writing, to the applicable County department no later than 3 business days after the date of the Bid award or notice of unsuccessful bid.

County department shall investigate the basis for the bid protest and analyze all facts. The County Purchasing agent will notify the bidder whose bid is the subject of the bid protest of evidence found as a result of the investigation, and afford the bidder an opportunity to rebut such evidence, and permit the bidder to present any evidence that the bid and/or contract award was done in an unfair or biased manner.

If requested County shall hold an informal hearing before the County Commissioners which will include the applicable County department. County Commissioners will issue a written decision within 15 business days following receipt of the bid protest, unless factors beyond Weston County's reasonable control prevent such a resolution, in which event such decision will be issued as expeditiously as circumstances reasonably permit.

The decision shall state the reasons for the action taken by County Commissioners. A copy of this decision will be furnished to the protestor and any other parties affected.