

RESOLUTION NO. 2018- 34

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
RIO BLANCO COUNTY, COLORADO ESTABLISHING A REVISED POLICY FOR
THE PROCUREMENT OF GOODS AND SERVICES BY COUNTY DEPARTMENTS**

WHEREAS, it is the policy of the Board of County Commissioners of Rio Blanco County, Colorado (BOCC), to obtain the best possible quality goods and services at the most competitive price; and

WHEREAS, on May 14, 2012, the BOCC adopted Resolution No. 2012-19 establishing a revised Procurement Policy; and

WHEREAS, the BOCC has considered the need for Department Heads to be able to efficiently obtain goods and services within their budgets in a timely manner; and

WHEREAS, the BOCC has considered the effects of inflation on goods and services in light of its existing policy of requiring a Request for Proposal (RFP) process for purchases in excess of \$5,000.00; and

WHEREAS, the BOCC believes it is appropriate to revise the Procurement Policy established by Resolution No. 2012-19; and

WHEREAS, the BOCC believes it is in the best interests of the citizens of Rio Blanco County to support local businesses whenever possible; and

WHEREAS, the adoption of this Resolution is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, welfare and convenience of the County and the inhabitants thereof;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Rio Blanco County, Colorado as follows:

Procedure:

1. Code of Conduct. Rio Blanco County will adhere to the standards of conduct maintained herein.
 - a. No individual who acts on behalf of Rio Blanco County will participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved.
 - b. Conflict is defined as a situation under which an individual who acts on behalf of Rio Blanco County, any member of his or her immediate family, or his or her business partner, or any organization which employs or is about to employ any of these parties, has a financial or other interest in the person or firm selected for the award.
 - c. No individual acting on behalf of the County will solicit or accept gratuities, favors or anything of monetary value from contractors, or parties to sub-agreements.

- d. Contractors that develop or draft grant applications or contract specifications, requirements, statements of work, invitations for bids, and/or requests for proposals are excluded from competing for such procurements.
 - e. Any employee, officer or agent of the County that violates the code of conduct will be subject to disciplinary action, to the extent permitted by federal, state or local laws and regulations.
2. Competitive Bids.
- a. The County will make contract awards to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the County in terms of price, quality, and other factors.
 - b. The County will set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated.
 - c. The County may impose geographical preferences in the evaluation of bids or proposals, including when Federal statutes mandate or encourage geographic preference.
 - d. The County reserves the right to reject any and all bids or offers when it is in the County's best interest to do so.
3. Procurement Procedures. The County will follow the procurement procedures as listed below:
- a. The County will not purchase unnecessary items.
 - b. Where appropriate, the County will perform an analysis of lease and purchase alternatives to determine the most economical and practical procurement.
 - c. Solicitations for goods and services will include a clear and accurate description of the technical requirements for the procurement (which will not unduly restrict competition); the requirements which the bidder/offeror must fulfill and all other evaluation factors; a description of technical requirements in terms of performance required; specific features of "brand name or equal" descriptions; and other applicable requirements set forth in C.F.R.
 - d. The County will use positive efforts to utilize local businesses (for non-federal grants), small businesses, minority-owned firms and women's business enterprises.
 - i. Local business is defined as having its primary business location within Rio Blanco County.
 - 1. Rio Blanco County reserves the right to give preference to local businesses over other businesses at the discretion of the BOCC, for non-federal grants
 - e. The County will determine the type of procuring instrument to be used based on appropriateness for the particular procurement and for promoting the best interest of the program or project involved.
 - f. The County will only contract with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. The County will consider factors such as integrity, past performance, financial and technical resources, and accessibility to such resources.

4. Procurement Thresholds.

- a. Department Heads are authorized to make purchases of goods (with issue of PO) and services within their budgets in an amount up to and including \$5,000 without seeking competitive bids or utilizing the RFP process.
- b. Department Heads are authorized to make purchases of goods in amounts greater than \$5,000 and up to and including \$10,000 (cost of goods exclusive of shipping), by obtaining bids from a minimum of two vendors and the lowest qualified bid should be awarded by issue of PO. For all purchases of services in amounts greater than \$5,000 and up to and including \$10,000, bids from a minimum of two vendors should be obtained and the lowest qualified bid should be awarded by issue of contract (approved by the Board of County Commissioners).
- c. For all purchases of goods and services in an amount greater than \$10,000, the formal RFP process should be utilized and the lowest qualified bidder should be awarded by issue of contract approved by the Board of County Commissioners. Sealed bids shall be utilized when it is deemed cost effective and/or required by Federal awarding agency.
- d. Noncompetitive proposals may be used if: 1) the item is only available from a single source; 2) the purchase of the item cannot be delayed by a competitive solicitation; 3) the Federal award agency or pass-through entity has authorized this process by written request; 4) after solicitation from a number of sources, competition is deemed inadequate; 5) State or Federal pricing; 6) contracts with other governmental units; 7) legal, accounting and auditing services; 8) professional services that are selected from a pre-qualified vendor list; 9) determination of the Board that a negotiated contract with a single vendor is in the best interest of the County; or 10) Sourcewell or other similar entity is used.

5. Recommendations. Recommendations shall be based in consideration of the applicable evaluation criteria below.

- a. Solicitations/requests for quotes, bids and proposals may include:
 - i. A clear and accurate description of the technical requirements for the materials, product, or service to be procured. In competitive procurements, such a description shall not contain features, which unduly restrict competition.
 - ii. Specifications of the requirements that the bidder/offer must fulfill and all other factors to be used in the evaluation of quotes, bids, proposals, or other offers.
 - iii. A description, when practicable, of all technical requirements of the functions and/or performance required, including the range of acceptable qualifications or minimal acceptable standards.
 - iv. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitations.
 - v. Preference to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment and are energy efficient.

- vi. A description of the proper format, if any in which proposals must be submitted, including the name of the County representative to whom proposals should be sent.
 - vii. The date by which quotes, bids, proposals or offers are due.
 - viii. Required delivery and performance dates/schedules.
 - ix. Specific quantity(ies) requested and unit(s) of measure.
6. Evaluation. All quotations, vendors, proposals, bids and offers must be responsive and responsible to the solicitation and shall be evaluated using a method appropriate to the purchase that considers some or all of the following criteria:
- a. Adequacy of the proposed methodology and/or supplies
 - b. Skill and experience of key personnel
 - c. Demonstrated experience and past performance of the work to be performed or product provided
 - d. Other technical specifications (determined by department requesting proposals)
 - e. Compliance with administrative requirements of the request for proposal (format, due date, etc.)
 - f. Financial position and capacity
 - g. Verification of communications with references provided
 - h. Ability and/or commitment to meet timelines
 - i. Cost and price analysis including a determination that the recommended award price is fair and reasonable
 - j. Business status including small, minority, woman-owned, locally-owned (for non-federal grants) and labor surplus area firms
 - k. Only responsible and responsive bids will be considered for award
 - l. Other criteria (to be specified by department requesting proposal)
- Not all the above criteria may apply in each evaluation. However, in all procurements that require consideration of multiple bids, the department that is responsible for the purchase shall establish the relative importance of each criterion prior to issuing a request for quotes, bids or proposals and shall evaluate each offer received.
7. Extension of Due Dates and Receipt of Late Proposals.
- a. Solicitations should provide for sufficient time to permit the preparation and submission of offers within the specified time frame and due date. However, in the event that an extension is justified and compatible with the requirements of the County, the extension may be granted for all potential bidders. All potential bidders shall be notified of the extension.
 - b. Vendor proposals are considered late if received after the due date and time specified in the solicitation. All such late proposals shall be marked "Late Proposal" on the outside of the envelope and retained, unopened, in the procurement folder. Vendors that submit late proposals shall be sent a letter notifying them that their proposal was late and could not be considered for award.
8. Procurement Records and Files.
- a. The County will establish and maintain procurement records and files. The County will document in the procurement files some form of cost or price analysis made in

connection with every procurement action. The County will maintain records documenting the basis for contractor selection, justification for noncompetitive procurement, and the basis for award cost or price.

- i. The County budget/finance department will track each contract, but each department will keep files on the procurement process and maintain the records.
 - b. The records will be in paper or electronic form.
9. Oversight and Monitoring of Contractors. Oversight and monitoring of contracts is the responsibility of each department.
- a. The County will maintain a system that ensures contractors comply with the terms, conditions, and specifications of the contract.
 - b. The County will evaluate and document contractor performance in terms of whether the contractor has met the terms, conditions, and specifications of the contract.
 - c. The County will require the contractor to prepare and maintain financial records and reports, supporting documents, and all other books, documents, papers and/or other records pertinent to the contract.
 - d. The County will keep all records for at least seven (7) years.

10. Contract Provisions.

- a. All contracts under Federal award must contain the provisions covered by Appendix II of the 2 CFR 200, as listed in Exhibit A.
- b. Contracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- c. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the County, including the manner by which termination shall be effected.
- d. Any award that requires the contracting/subcontracting for construction or facility improvements shall allow the County to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract/subcontract exceeds \$150,000 (Simplified Acquisition Threshold), unless otherwise required by statute.
 - i. For any contracts/subcontracts exceeding \$150,000 the Federal awarding agency may accept the bonding policy and requirements of the County, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. However, if a determination has not been made, the minimum requirements are:
 1. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The bid guarantee must consist of a commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance, execute such contractual documents as may be required.
 2. A performance 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 secure fulfillment of the contractor's obligations per the contract.

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 statute of all persons supplying labor and material for the work provided per the contract.

11. Consideration of Minority, Small Business, and Women-Owned Businesses

- a. Positive efforts will be made by the County to utilize small businesses, minority-owned businesses and women-owned businesses whenever possible. The following steps will be taken:
 - i. Place qualified small, minority-owned and women-owned businesses on solicitation lists and assure these businesses are solicited for potential sources.
 - ii. Divide requirements and establish delivery schedules, when possible, to allow for the utmost participation by small, minority-owned and women-based businesses.
 - iii. Use the services and assistance, as appropriate, of such organizations such as, the Small Business Administration and the Department of Commerce's Minority Business Development Agency in working with these businesses.
 - iv. Require the general contractor, if subcontractors are to be used, to follow the same guidelines as above.

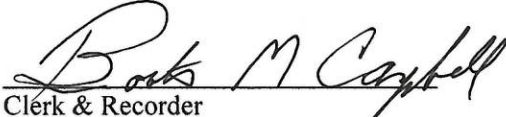
12. This policy and procedure replaces the Policy adopted by Resolution No. 2012-19 and shall be reviewed periodically and updated consistent with the requirements established by the Board of County Commissioners, Federal and State laws/regulations, and other County offices.

13. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The Board of County Commissioners of Rio Blanco County, Colorado, declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase, or portion herein, despite the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions would be declared invalid or unconstitutional.


DULY MOVED, SECONDED, AND PASSED ON A VOTE OF 3 FOR AND 0
AGAINST, THIS 10th DAY OF September, 2018.

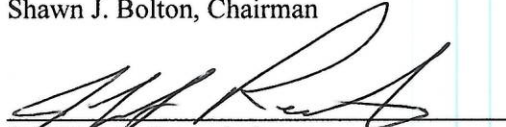
**BOARD OF COUNTY COMMISSIONERS OF
RIO BLANCO COUNTY, COLORADO**

ATTEST:


Clerk & Recorder




Shawn J. Bolton, Chairman


Jeff Rector, Commissioner


Si Woodruff, Commissioner

EXHIBIT A

FEDERAL CONTRACT PROVISIONS

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 non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 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, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity 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.
6. 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 Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts 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 (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide 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.
9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.