

**CITY OF RAPID CITY
UNIFORM GRANT GUIDANCE
POLICIES/PROCEDURES**

TABLE OF CONTENTS

I.	Grant Application Approval	Page 2
II.	Federal Fiscal Compliance	Page 3
III.	Travel Reimbursement	Page 7
IV.	Allowability of Costs	Page 8
V.	Cash Management	Page 11
VI.	Grant Subrecipient and Contractor Monitoring Procedures	Page 12
VII.	Management of Property Acquired With Federal Funds	Page 18
VIII.	Procurement	Page 21
IX.	Conflict of Interest	Page 27

Attachment A – 2 CFR 200.430 and 2 CFR 200.431

Attachment B – Determination of Allowable Costs

Attachment C – 2 CFR 200.321

Attachment D – Resolution 2016-096 A Resolution Adopting a Conflict of Interest Policy for Elected and Appointed Officials of the City of Rapid City

Attachment E – South Dakota Local Government Guide for Acquisitions, Disposals and Exchanges (Bid Booklet)

I. GRANT APPLICATION APPROVAL

Department Directors or staff who wish to apply for a federal grant must request advance authorization from the Council or the pertinent governing board¹ to apply for the grant and to accept the grant if awarded. The request to Council/board shall specify if the grant will require the City or any other local entity to contribute matching funds, resources, or other costs if the grant is received. If the City will incur costs if the grant is received, staff's request to Council/board shall identify the budgeted source for the costs. The request shall also provide a summary of the nature of the grant, to include whether the grant will pay for salaries/compensation, whether the grant will involve a subrecipient award(s), and other pertinent details.

Approval of Council or the governing board must be obtained prior to submitting the grant application to the federal agency, except when unusual circumstances justify submitting the grant application in advance of Council/board approval so long as no matching funds or resources will be required and the Mayor, Finance Officer, and Council/board leadership give initial approval for the grant application. In such unusual circumstances, Council/board approval may be obtained after submission of the grant application has occurred.

Upon award of the grant, the Department Director or designee shall provide the Finance Office with a copy of the award, including the grant agreement, terms and conditions, and other controlling grant documents. Questions regarding the terms of the grant may be directed to Grants Compliance and Financial Reporting Manager (Dave Yuhas, at the time of adoption of this policy), or to any attorney at the City Attorney's Office.

¹ When grants are sought by the Rapid City Regional Airport, the Rapid City Public Library, or the Rushmore Plaza Civic Center, such approval for grant applications/awards shall be obtained from the pertinent governing board, not the Council.

II. FEDERAL FISCAL COMPLIANCE

A. Authority - 2 CFR Part 200

The Council shall ensure federal funds received by the City are administered in accordance with federal requirements, including but not limited to the federal Uniform Grant Guidance.

B. Delegation of Responsibility

The Council designates the Finance Officer as the City's contact for all federal programs and funding.

The Finance Officer or designee, in collaboration with the applicable Department Directors, shall establish and maintain a sound financial management system to include internal controls and federal grant management standards covering the receipt of both direct and state-administered federal grants and to track costs and expenditures of funds associated with grant awards.

C. Guidelines

The City's financial management system shall be designed with strong internal controls, a high level of transparency and accountability, and documented procedures to ensure that all financial management system requirements are met. Financial management standards and procedures shall assure that the following responsibilities are fulfilled²:

Identification – The City must identify, in its accounts, all federal awards received and expended and the federal programs under which they were received.

Financial Reporting – Accurate, current, and complete disclosure of the financial results of each federal award or program must be made in accordance with the financial reporting requirements of granting agency.

Accounting Records – The City must maintain records which adequately identify the source and application of funds provided for federally-assisted activities.

Internal Controls – Effective control and accountability must be maintained for all funds, real and personal property and other assets. The City must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

Budget Control – Actual expenditures or outlays must be compared with budgeted amounts for each federal award. Procedures shall be developed to establish determination for allowability of costs for federal funds.

Cash Management – The City shall maintain written procedures to implement the cash management requirements found in 2 CFR Part 200, including payment requirements found in 2 CFR 200.305.

² 2 CFR 200.302.

Allowability of Costs – The City shall ensure that allowability of all costs charged to each federal award is accurately determined and documented.

D. Standards of Conduct

The City shall maintain standards of conduct covering conflicts of interest and the actions of employees and governing officials engaged in the selection, award and administration of contracts.³

All employees shall be informed of conduct that is required for federal fiscal compliance and the disciplinary actions that may result from violation of the City’s policies, administrative regulations, rules and procedures.

E. Employees - Time and Effort Reporting

When the grant award includes amounts to reimburse the City for employee compensation and/or fringe benefits, the Department Director or designee shall ensure compliance with 2 CFR 200.430 Compensation – personal services and 2 CFR 200.341 – Compensation – fringe benefits. *See Attachment A.* All City employees paid with federal funds shall document the time they expend in work performed in support of each federal program, in accordance with law. Time and effort reporting requirements do not apply to contracted individuals.

City employees shall be reimbursed for travel costs incurred in the course of performing services related to official business as a federal grant recipient.⁴

The City shall establish and maintain employee policies on hiring, benefits and leave and outside activities, as approved by the Council.⁵

F. Record Keeping

The City shall develop and maintain a Records Management Plan and related policy and administrative regulations for the retention, retrieval and disposition of manual and electronic records, including emails.

The City shall ensure the proper maintenance of federal fiscal records documenting the following⁶:

1. Amount of federal funds.
2. How funds are used.
3. Total cost of each project.
4. Share of total cost of each project provided from other sources.

³ 2 CFR 200.112. *See below Section IX.*

⁴ 2 CFR 200.474.

⁵ 2 CFR 200.431.

⁶ 2 CFR 200.333.

5. Other records to facilitate an effective audit.
6. Other records to show compliance with federal program requirements.
7. Significant project experiences and results.

All records must be retrievable and available for programmatic or financial audit.

The City shall provide the federal awarding agency, external auditors, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, the right of access to any documents, papers, or other City records which are pertinent to the federal award.⁷ The City shall also permit timely and reasonable access to the City's personnel for the purpose of interview and discussion related to such documents.

Records shall be retained for a minimum of five (5) years from the date on which the final Financial Status Report is submitted, or as otherwise specified in the requirements of the federal award, unless a written extension is provided by the awarding agency or the cognizant/oversight agency for audit.

If any litigation, claim or audit is started before the expiration of the standard record retention period, the records shall be retained until all litigation, claims or audits have been resolved and final action taken.⁸

As part of the Records Management Plan, the City shall develop and maintain a records retention schedule, which shall delineate the record retention format, retention period and method of disposal.

The Records Management Plan shall include identification of staff authorized to access records, appropriate training, and preservation measures to protect the integrity of records and data.

The City shall ensure that all personally identifiable data protected by law or regulations is handled in accordance with the requirements of applicable law, regulations, City policy and administrative regulations.

G. Subrecipient Monitoring

In the event that the City awards subgrants, the City shall establish procedures for the following⁹:

1. Assessing the risk of noncompliance.
2. Monitoring grant subrecipients to ensure compliance with federal, state, and local laws and City policy and procedures as well as the terms of the subgrant.
3. Ensuring the City's record retention schedule addresses document retention by subrecipient on assessment and monitoring.

See Section V below.

⁷ 2 CFR 200.336(a).

⁸ 2 CFR 200.332(a).

⁹ 2 CFR 220.331.

H. Compliance Violations

Employees and contractors involved in federally funded programs and subrecipients shall be made aware that failure to comply with federal law, regulations or terms and conditions of a federal award may result in the federal awarding agency or passthrough entity imposing additional conditions or terminating the award in whole or in part.¹⁰

¹⁰ 2 CFR 200.338 (Remedies for Noncompliance); 2 CFR 200.339 (Termination); and 200.342 (Effects of Suspension and Termination).

III. TRAVEL REIMBURSEMENT

A. Authority

The City shall reimburse administrative, professional and support employees, and elected officials for travel costs incurred in the course of performing services related to official business as a federal grant recipient.

B. Definition

For purposes of this policy, **travel costs** shall mean the expenses for transportation, lodging, subsistence and related items incurred by employees and elected officials who are in travel status on official business as a federal grant recipient.¹¹

C. Delegation of Responsibility

Elected officials and City employees shall comply with applicable City policies and regulations established for reimbursement of travel and other expenses.

The validity of payments for travel costs for all City employees and elected officials shall be determined by the Finance Officer or designated employee.

D. Guidelines

Travel costs shall be reimbursed on a mileage basis for travel using an employee's personal vehicle and on a per diem cost basis for meals, lodging and other allowable expenses, consistent with the City's travel and training regulations.

Mileage reimbursements shall be at the rate approved by the Council for other City travel reimbursements. Per diem costs for meals, lodging and other allowable expenses are allowed as per the City's travel and training policy, which provides for reasonable reimbursements for such costs and which are applied in similar circumstances across both federally-funded and non-federally funded City activities.

All travel costs must be presented with an itemized, verified statement prior to reimbursement.

In addition, if costs for lodging, other subsistence, and incidental expenses are charged directly to the federal award, documentation must be maintained that justifies the following¹²:

1. Participation of the individual is necessary to the federal award.
2. The costs are reasonable and consistent with the City's established travel and training policy.

¹¹ 2 CFR 200.474.

¹² 2 CFR 200.474(b).

IV. ALLOWABILITY OF COSTS¹³

Expenditures must be aligned with approved budgeted items. Prior Council approval is needed before any changes or variations from the Council-approved budget and grant application are made. Deviations from the budget approved through the grant award must be reported to the federal agency, and the agency's approval may be required before some budget changes can occur.¹⁴

A. Delegation of Responsibility

When determining how the City will spend its grant funds, the applicable Department Director will review the proposed cost to determine whether it is an allowable use of federal grant funds *before* obligating and spending those funds on the proposed good or service.

B. Allowability Determinations

All costs supported by federal funds must meet the standards outlined in 2 CFR Part 200, Subpart E. The Department Director must consider these factors when making an allowability determination. A section entitled, Helpful Questions for Determining Whether Costs are Allowable, is included as Attachment B to this document.

Part 200 sets forth general cost guidelines that must be considered, as well as rules for specific types of items, both of which must be considered when determining whether a cost is an allowable expenditure of federal funds. The expenditure must also be allowable under the applicable program statute along with accompanying program regulations, nonregulatory guidance and grant award terms and conditions.

Whichever allowability requirements are stricter will govern whether a cost is allowable.

Generally, costs must meet the following general criteria to be allowable:¹⁵

1. Must be necessary and reasonable for the performance of the federal award.

*A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the cost was made. For example, **reasonable** means that sound business practices were followed and purchases were comparable to market prices.*

When determining reasonableness of a cost, consideration must be given to the following:¹⁶

¹³ 2 CFR 200.302(b)(7); 2 CFR 200 Subpart E – Cost Principles.

¹⁴ 2 CFR 200.308.

¹⁵ 2 CFR 200.403.

¹⁶ 2 CFR 200.404.

- Whether the cost is a type generally recognized as ordinary and necessary for the operation of the City or the proper and efficient performance of the federal award.
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; federal, state and other laws and regulations; and terms and conditions of the federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether the individual incurring the cost acted with prudence in the circumstances considering responsibilities to the City, its employees the public at large, and the federal government.
- Whether the City significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the federal award's cost.

*The determination of whether a cost is **necessary** will be based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the City can demonstrate that the cost addresses an existing need and can prove it.*

When determining whether a cost is necessary, consideration may be given to:

- Whether the cost is needed for the proper and efficient performance of the federal award program.
- Whether the cost is identified in the approved budget or application.
- Whether there is a community service or infrastructure benefit associated with the cost.
- Whether the cost aligns with identified needs based on results and findings from a needs assessment.
- Whether the cost addresses program goals and objectives and is based on program data.

2. Must be allocable to the federal award.

A cost is allocable to the federal award if the goods or services involved are chargeable or assignable to the federal award in accordance with the relative benefit received. This means that the federal grant program derived a benefit in proportion to the funds charged to the program.

3. Must be consistent with City policies and procedures that apply uniformly to both federally-financed and other activities of the City.

4. **Must conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the federal award as to the types or amount of cost items.**
5. **Must be consistent in treatment.**
A cost cannot be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the federal award as an indirect cost or assigned under another award as an indirect cost.
6. **Must be adequately documented.**
All expenditures must be properly documented.
7. **Must be calculated in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in Part 200.**
8. **Must not be included as a match or cost-share, unless the specific federal program authorizes federal funds to be treated as such.**
Some federal program statutes require the nonfederal entity to contribute a certain amount of nonfederal resources to be eligible for the federal program.
9. **Must be the net of all applicable credits.¹⁷**
The term “applicable credits” refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the federal award. Typical examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the state relate to the federal award, they shall be credited to the federal award, either as a cost reduction or a cash refund, as appropriate.

C. Selected Items of Cost

Subpart E of Part 200 sets forth principles to be applied in establishing the allowability of 55 specific cost items (commonly referred to as Selected Items of Cost), at 2 CFR Sec. 200.420-200.475. These principles are in addition to the other general allowability standards and apply whether or not a particular item of cost is properly treated as direct cost or indirect cost. Meeting the specific criteria for a listed item does not by itself mean the cost is allowable, as it may be unallowable under other standards or for other reasons, such as restrictions contained in the terms and conditions of a particular grant or restrictions established by the state or in City policy. If an item is unallowable for any of these reasons, federal funds cannot be used to purchase it.

Department directors are responsible for spending federal grant funds and for determining allowability must be familiar with and refer to the Part 200 selected items of cost section. These rules must be followed when charging these specific expenditures to a federal grant. When applicable, employees must check costs against the selected items of cost requirements to ensure the cost is allowable, and also check state, City and program-specific rules.

¹⁷ 2 CFR 200.406.

V. CASH MANAGEMENT

Generally, the City receives payments from the State of South Dakota or directly from the federal granting agency on a reimbursement basis. In some circumstances, the City may receive an advance of federal grant funds. This Section addresses responsibilities of the City and program staff under those alternative payment methods. In every case, the City shall maintain accounting methods and internal controls and procedures that assure those responsibilities are met.

A. Payment Methods

1. *Reimbursements.* The City will initially charge federal grant expenditures to nonfederal funds. The Department Director or designee will request reimbursement from the federal agency for actual expenditures incurred under the federal grants on a monthly basis.

The Department Director or designee shall submit the reimbursement request to the granting agency on the appropriate form through the grantor-designated portal or State agency. A copy of the reimbursement request shall be provided to the Finance Office at the same time. All reimbursements shall be based on actual disbursements, not on obligations. Department Directors will process reimbursement requests within the timeframes required by the grant agreement for disbursement.

Consistent with state and federal requirements, the City will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for review upon request.

Reimbursements of actual expenditures do not involve interest calculations.

2. *Advances.*¹⁸ When the City receives advance payments of federal grant funds, it must minimize the time elapsing between the transfer of funds to the City and the expenditure of those funds on allowable costs of the applicable federal program. The City shall attempt to expend all advances of federal funds within seventy-two (72) hours of receipt.

When applicable, the City shall use existing resources available within a program before requesting advances. Such resources include program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds.¹⁹

The City shall hold federal advance payments in insured, interest-bearing accounts.²⁰ The City shall not retain any interest earned on federal grant cash balances. Any interest earned on federal grant funds will be remitted annually to the federal awarding agency.²¹ Remittance of interest shall be responsibility of the Finance Office.

¹⁸ 2 CFR 200.305.

¹⁹ 2 CFR 200.305(b)(5).

²⁰ 2 CFR 200.305(b)(8).

²¹ *But see* 2 CFR 200.305(b)(9).

VI. GRANT SUBRECIPIENT AND CONTRACTOR MONITORING PROCEDURES

If the City grants subawards of federal funding to other entities as subrecipients, the City shall be responsible for the following:²²

1. Evaluating the entity for risk of noncompliance to determine appropriate monitoring practices.
2. Entering into a contract with the subrecipient which sets forth the parties' obligations and responsibilities, including provisions concerning the parties' obligations related to the grant award and federal laws and regulations.
3. Monitoring the subrecipient entity's implementation to ensure compliance with federal, state and local laws, conditions of the federal funding award and City policy and procedures.
4. Notifying the subrecipient entity of identified deficiencies found during the monitoring process and ensuring that identified deficiencies are corrected.
5. Documenting and retaining records on subrecipient identification, notification, evaluation, monitoring and corrective actions taken.

A. Definitions

For purposes of policies and procedures related to federal programs, the following definitions shall apply:

Contract²³ – a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used here does not include a legal instrument, even if the entity considers it a contract, when the substance of the transaction meets the definition of a federal program award or subaward.

Contractor²⁴ – an entity that receives a contract, as defined in law and regulations, by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award.

Pass-through entity²⁵ – a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. The City will serve as the pass-through entity in cases where it awards federal funding to a subrecipient as defined in this procedure.

²² 2 CFR 200.331.

²³ 2 CFR 200.22.

²⁴ 2 CFR 200.23.

²⁵ 2 CFR 200.74.

Subaward²⁶ – an award provided by a pass-through entity to a subrecipient in order to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the passthrough entity considers a contract.

Subrecipient²⁷ – a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. (A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.)

In the event the City disperses federal funds received through a federal award to other entities and assigns responsibilities to the outside entity to conduct a portion of the work, the City shall be responsible for determining, on a case-by-case basis, whether the agreement with such entity places the outside entity in the role of a subrecipient receiving a subaward of federal funding, or the role of a contractor.²⁸ In determining whether an entity is a contractor or a subrecipient, under the above definitions, the City should consider the guidance given in 2 CFR 200.330 as well as guidance given in any grant documentation or agreement. The federal granting agency may supply additional guidance and impose additional requirements to support the determination of an entity as a contractor or a subrecipient.

B. Contractors

City shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.²⁹ City shall also ensure that contractors' conduct does not threaten or undermine the terms and conditions of the Federal award. Bonding requirements shall be imposed on contractors as required by 2 CFR 200.325 or by the terms and conditions of the federal award. All contracts shall contain the relevant applicable provisions as required by 2 CFR Part 200 Appendix II.³⁰ The City shall take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, as provided in the grant agreement and in 2 CFR 200.321, see Attachment C.³¹

C. Subrecipients

The City shall notify subrecipients that they have been identified as a subrecipient and that the funding qualifies as a subaward.³² The City shall provide the subrecipient with the following information regarding the federal funding award at the time of the subaward, and shall also provide notice of change of such information:

²⁶ 2 CFR 200.92.

²⁷ 2 CFR 200.93.

²⁸ 2 CFR 200.330.

²⁹ 2 CFR 200.318(b).

³⁰ 2 CFR 200.326.

³¹ 2 CFR 200.321. *See also* 2 CFR 200.321(b) for list of affirmative steps that the City must take.

³² 2 CFR 200.331(a).

1. Federal Award Identification information, including:
 - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date of award to the recipient by the federal agency;
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
 - (vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
 - (viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 - (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (x) Name of federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity;
 - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each federal award and the CFDA number at time of disbursement;
 - (xii) Identification of whether the award is Research and Development; and
 - (xiii) Indirect cost rate for the federal award if applicable.
2. All requirements imposed by the City on the subrecipient so that the federal award is used in accordance with federal statutes, regulations and the terms and conditions of the federal award;
3. Any additional requirements that the City imposes on the subrecipient in order for the City to meet its own responsibility to the federal awarding agency including identification of any required financial and performance reports;
4. Either an approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government or, if no such rate exists, a rate negotiated between the City and the subrecipient.
5. A requirement that the subrecipient permit the City and auditors to have access to the subrecipient's records and financial statements as necessary for the City to meet all of its grant requirements and the terms of 2 CFR 200.331; and
6. Appropriate terms and conditions concerning closeout of the subaward.

D. Evaluation of Risk

The City shall evaluate each subrecipient's risk of noncompliance with law, regulations and the terms and conditions of the subaward to determine appropriate monitoring practices.³³

The Finance Officer or designee shall be responsible for evaluating risk based on the following factors:

1. The subrecipient's prior experience with the same or similar subawards;
2. The results of previous audits, including whether the subrecipient receives a single audit and the extent to which the same or similar subaward has been audited;
3. Whether the subrecipient has new personnel, or new or substantially changed systems and processes; and
4. The extent and results of any federal award agency's monitoring of the subrecipient.

The Department Director or designee shall request adequate documentation from the subrecipient to conduct the evaluation of risk; such documentation may include, but shall not be limited to, audit reports, financial reports, policies and procedures and detailed descriptions or users' guides of current systems and processes.

In addition to these factors, the City shall evaluate subrecipients for risk of noncompliance as specified in the subrecipient agreement.

Based on the results of the risk evaluation, the City may consider imposing specific conditions on implementation of the subaward, in accordance with applicable law and regulations.³⁴

E. Monitoring

The City shall monitor the implementation and activities of each subrecipient as necessary to ensure that the subaward is used for authorized purposes, in accordance with law, regulations and the terms and conditions of the subaward, and that subaward performance goals are achieved.³⁵

The City shall notify subrecipients of monitoring requirements and may provide technical assistance to subrecipients in complying with monitoring requirements.

The Department Director or designee shall be responsible for monitoring of subrecipients. As part of the monitoring process, the City shall complete the following steps³⁶:

1. Review financial and performance reports required by the City.

³³ 2 CFR 200.331(b).

³⁴ 2 CFR 200.331(c).

³⁵ 2 CFR 200.331(d).

³⁶ 2 CFR 200.331(d)(1)-(3).

2. Follow-up and ensure that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the subaward provided to the subrecipient from the City detected during through audits, on-site reviews, and other means.
3. Issue a management decision for audit findings pertaining to the subaward provided to the subrecipient by the City, in accordance with applicable law and regulations.

Monitoring activities may also include in the following³⁷:

1. Review of progress reports, financial reports, performance reports, and data quality.
2. On-site visits and reviews of the subrecipient's program operations.
3. Review of federal or state debarment lists.
4. Review of other agreed-upon procedures engagements as specified in the subrecipient agreement, such as audit services as discussed in 2 CFR 200.425.

The City shall verify that subrecipients are audited as required by 2 CFR 200 Subpart F or other applicable law and regulations.

F. Follow-Up Actions

The Department Director or designee shall provide subrecipients with written documentation detailing their monitoring results and listing any identified deficiencies. The City shall consider whether the results of monitoring indicate the need to revise existing City policy and procedures.

The City shall require subrecipients to take immediate action on issues involving ineligible or illegal use of federal funding and to notify the City of corrective action taken.

The City shall require subrecipients to develop a corrective action plan to address other identified deficiencies or noncompliance issues; such plan shall be submitted to the City within 30 days, and the City shall evaluate and monitor the activities taken by the subrecipient under the corrective action plan.

The Department Director or designee shall maintain all documentation on monitoring of subrecipients and corrective action taken during the monitoring process. The City shall report issues of noncompliance to the appropriate federal agency where required by law, regulations, or requirements of the federal funding program.

G. Remedies for Noncompliance

When monitoring activities identify issues of noncompliance that are not addressed through corrective action, the City may take the following actions³⁸:

³⁷ 2 CFR 200.331(e).

³⁸ 2 CFR 200.338.

1. Impose specific conditions on the subrecipient, in accordance with applicable law and regulations.
2. Temporarily withhold cash payments, in accordance with applicable law and regulations.
3. Disallow or deny use of funds for all or part of the cost of the activity or action not in compliance.
4. Wholly or partially suspend or terminate the subrecipient agreement.
5. Recommend that the federal agency initiate suspension and debarment proceedings.
6. Withhold further awards or agreements for the project or program.
7. Take other remedies legally available, in consultation with the City attorney.

H. Record Retention

The Department Director shall ensure that all documentation regarding subrecipient identification, notification, evaluation, monitoring activities and corrective action is maintained in accordance with City policy and procedures. Records shall be retained in accordance with applicable law, regulations, specific requirements of the federal program and the City's records retention schedule.

VII. MANAGEMENT OF PROPERTY ACQUIRED WITH FEDERAL FUNDS

A. Contract and Purchasing Administration

The City maintains internal controls, administrative regulations and procedures to ensure that contractors deliver goods and services in accordance with the terms, conditions and specifications of the designated contract, purchase order or requisition.

Property shall be classified as **equipment**,³⁹ **supplies**,⁴⁰ **computing devices**⁴¹ and **capital assets**⁴² as defined and specified in accordance with law, regulations and City policy.

B. Inventory Control/Management

All property purchased with federal funds, regardless of cost, will be inventoried by recipient as a safeguard.

Inventory will be received by the department or program requesting the item; designated staff will inspect the property, compare it to the applicable purchase order or requisition, and ensure it is appropriately recorded on the department's property management system/schedule.

Items acquired will be tracked by source of funding and acquisition date.

Inventory records of equipment and computing devices purchased with federal funds must be current and available for review and audit. Such inventory records shall include the following information:⁴³

1. Description of the item, including any manufacturer's model number.
2. Manufacturer's serial number or other identification number.
3. Identification of funding source (including the FAIN).
4. Identity of title holder, if applicable.
5. Acquisition date
6. Unit cost.
7. Source of items, such as company name.
8. Percentage of federal funds used in the purchase.
9. Present location, use, condition of item, and date information was reported.
10. Pertinent information on the ultimate transfer, replacement or disposition of the item including the date of disposal and sale price of the property.

Inventory shall be updated as items are sold, lost or stolen or cannot be repaired and new items are purchased.

³⁹ 2 CFR 200.33.

⁴⁰ 2 CFR 200.94.

⁴¹ 2 CFR 200.20.

⁴² 2 CFR 200.12.

⁴³ 2 CFR 200.313(d).

Annual Physical Inventory - The physical inventory of items will be conducted once every two years⁴⁴ by designated City staff and the results will be reconciled with the inventory records and reported to the Department Director.

Maintenance – The Department Director or designee shall establish adequate maintenance procedures to ensure that property is maintained in good condition in accordance with law, grant regulations and City policy.

Safeguards - The City will ensure that adequate safeguards are in place to prevent loss, damage or theft of property.⁴⁵ These procedures include the following:

1. Any loss, damage or theft will be reported to the Department Director and investigated and fully documented and may be reported to local law enforcement, if applicable.
2. If stolen items are not recovered, the City will submit copies of the investigative report and insurance claim to the federal awarding agency.
3. The City will be responsible for replacing or repairing lost, damaged, destroyed or stolen items.
4. Replaced equipment is property of the originally funded program and should be inventoried accordingly.

Property purchased with federal funds may not be loaned or transferred within City departments.

C. Disposition of Property Acquired with Federal Funds

When the City determines that real property, including land, land improvements structures and accessories thereto, acquired under a federal award is no longer needed for the originally-authorized purpose, the Department Director must obtain disposition instructions from the federal awarding agency or pass-through entity administering the program, in accordance with applicable law and regulations.⁴⁶

When the City determines that equipment or supplies acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Department Director will contact the federal awarding agency or pass-through entity administering the program to obtain disposition instructions, based on the fair market value of the equipment or supplies.⁴⁷ The Department Director will be responsible for contacting the federal awarding agency and determining the process for disposition of equipment or supplies.

⁴⁴ 2 CFR 200.313(d)(2).

⁴⁵ 2 CFR 200.313(d)(3).

⁴⁶ 2 CFR 311.

⁴⁷ 2 CFR 313(e).

Approved property dispositions items with a fair market value of \$5,000 or less that are no longer effective may be retained, sold or transferred to other City departments. For items with a fair market value greater than \$5,000 that are sold, the federal awarding agency is entitled to the federal share of the current market value or sales proceeds, as required by federal regulations or the award agreement.⁴⁸

Upon termination or completion of the federally-funded project or program, for any residual inventory of unused supplies exceeding \$5,000 in total aggregate value which are not needed for any other federal award, the City shall retain the supplies for use on other activities or sell them. Upon either method of disposal, the City shall compensate the federal agency for its share of the current market value or sales proceeds.⁴⁹

If the City is replacing the equipment or supplies, the City may use the existing equipment or supplies as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

The City must comply with relevant laws governing the surplus of public property in disposing of unnecessary equipment or supplies acquired with federal funds. Such methods may include the following:

- Public auction and/or online sale – generally conducted by a licensed auctioneer.
- Salvage – scrap sold to local dealers.
- Negotiated sale – normally used when disposing of items of substantial value.
- Sealed bid – normally used for items of substantial value or unique qualities.
- Pre-priced sale – large quantities of obsolete or surplus equipment or supplies may be sold by this method.
- Donation to charitable organizations.
- Disposition to trash for equipment or supplies with no value.

The Department Director or designee will be responsible for maintaining records of obsolete and surplus property disposed of and will report to the federal awarding agency when required.

⁴⁸ 2 CFR 200.313(e)(2).

⁴⁹ 2 CFR 200.314(a).

VIII. PROCUREMENT

This document is intended to integrate standard City's purchasing procedures with additional requirements applicable to procurements that are subject to the federal Uniform Grant Guidance regulation. The City maintains the following purchasing procedures, in accordance with federal and state laws, regulations and City policy.

A. Responsibility for Purchasing

The Council has outlined standard City purchasing responsibility, methods of purchasing, price quotations and bid requirements in the following Council policies and their accompanying administrative regulations or procedures:

Rapid City Municipal Code (RCMC) 3.04.030 - Purchasing System
http://www.amlegal.com/codes/client/rapid-city_sd/

South Dakota Codified Laws -- Title 5 Public Property, Purchases and Contracts, Chapter 5-18A through 5-18D
http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=5

B. Purchase Methods

When a request for purchase of equipment, supplies or services has been submitted and approved as outlined below, the procurement method to be used will be determined based on the total cost of the purchase as further outlined below. This procedure outlines the cost thresholds for determining when the quote or formal bidding procedures that are required by state law as reflected in RCMC must be modified when making purchases for federally-funded purposes, so as to comply with both state and federal requirements. Final determination of which purchasing procedures are to be applied is delegated to the Department Director under the authority of the City Council.

1. Standard Procurement Documents and Purchase Request Process

Purchase requests by an employee must first be submitted to the Department Director. Purchase of all budgeted items or items approved by program manager must be initiated by use of a purchase order submitted to and signed by the Department Director. Staff shall use the applicable electronic purchase orders for purchase requests, which are pre-numbered and are accessible to designated purchasing staff in Finance Office.

Purchase orders shall contain information including, but not limited to, the following:

1. Description of the services to be performed or goods to be delivered.
2. Location of where services will be performed or goods will be delivered.
3. Appropriate dates of service or delivery.

Documentation on purchase orders and requisitions shall be maintained in accordance with the City's Records Management Policy and records retention schedule.

Contracts shall be reviewed by the City Attorney prior to Council approval or approval by the Department Director, whichever is applicable.

Contracts to which the Uniform Grant Guidance apply shall contain the clauses specified in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), when applicable.

2. Micro-Purchases Not Requiring Quotes or Bidding (up to \$5,000)

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. For purposes of this procedure, **micro-purchase** means a purchase of equipment, supplies or services for use in federally funded programs using simplified acquisition procedures, the aggregate amount of which does not exceed a base amount of \$5,000.⁵⁰

The micro-purchase method is used in order to expedite the completion of its lowest dollar small purchase transactions and minimize the associated administrative burden and cost.⁵¹ To the extent practicable, the City distributes micro-purchases equitably among qualified suppliers when the same or materially interchangeable products are identified and such suppliers offer effectively equivalent rates, prices and other terms.⁵² The Department Director will be responsible to determine the equitable distribution of micro-purchases.

Micro-purchases may be awarded without soliciting competitive quotations if the Department Director considers the price to be reasonable. The City will maintain evidence of this reasonableness in the records of all micro-purchases. **Reasonable** means that sound business practices were followed and the purchase is comparable to market prices for the geographic area. Such determinations of reasonableness may include comparison of the price to previous purchases of the same item or comparison of the price of items similar to the item being purchased.

Even if the cost of a purchase qualifies it as a micro-purchase, bidding or small purchase procedures may be used optionally when those procedures may result in cost savings.

⁵⁰ 2 CFR 200.320(a).

⁵¹ 2 CFR 200.67.

⁵² 2 CFR 200.320(a).

3. *Small Purchase Procedures (more than \$5,000 but less than the bid limits of \$25,000/\$50,000)*

For purposes of this procedure, **small purchase procedures** are those relatively simple and informal procurement methods which do not exceed the bid limits in state law.⁵³ The following procedures may be used to acquire services or supplies that do not exceed \$25,000, or to purchase equipment or to construct public improvements that do not exceed \$50,000.⁵⁴ Please note that purchases which exceed these amounts require formal competitive bidding pursuant to City code and state law.

Small purchases may be made without formal competitive bid/proposals so long as the Department Director or designee first obtains written or telephonic price or rate quotations from at least three (3) sources and maintains records of quotes as provided in City municipal code.⁵⁵ Such purchases may be approved by the Department Director, without Council approval, if the purchase is otherwise in compliance with RCMC Chapter 3.04.

4. *Formal Competitive Bidding*

Publicly Solicited Sealed Competitive Bids:

For purchases in excess of the small purchase procedures discussed above (\$25,000 for purchase of supplies or services, or \$50,000 for purchases of equipment or construction of public improvements), sealed competitive bids are publicly solicited and awarded to the lowest responsive and responsible bidder as provided in state law and City code.⁵⁶

Procurement by sealed bids occurs when bids are publicly solicited and when a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.⁵⁷

The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply:

- (1) In order for sealed bidding to be feasible, the following conditions should be present:⁵⁸
 - (i) A complete, adequate, and realistic specification or purchase description is available;
 - (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

⁵³ 2 CFR 200.320(b).

⁵⁴ SDCL 5-18A-14; SDCL 5-18A-22(19). Equipment is defined as tangible personal property (including information technology systems) that have a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the City for financial statement purposes, or \$5,000. 2 CFR 200.33.

⁵⁵ RCMC 3.04.030.B.

⁵⁶ SDCL 5-18A-14; SDCL 5-18A-22(19).

⁵⁷ 2 CFR 200.320(c).

⁵⁸ *Id.*

- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.⁵⁹ Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

Competitive Proposals

When permitted, the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.⁶⁰ Competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The City shall comply with other applicable state and federal law and regulations, City policy and administrative regulations regarding purchasing by competitive proposals. The City may consult with the City Attorney in determining the required process for purchasing through competitive proposals when necessary.

If this method is used, the following requirements apply:⁶¹

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified sources.

⁵⁹ 2 CFR 200.320(c)(2)(iv).

⁶⁰ 2 CFR 200.320(d).

⁶¹ 2 CFR 200.320(d).

3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Competitive proposals shall be evaluated by the Department Director and/or the Deputy Finance Officer based on factors including but not limited to:

- Cost
- Experience of contractor
- Availability
- Personnel qualifications
- Financial stability
- Minority business, women's business enterprise, or labor surplus area firm status
- Project management expertise
- Understanding of City needs

The Request for Proposals shall state the relative importance of all factors to be considered by the City in selecting a proposal. Evaluations shall be completed in a timely manner and documented, and shall be reviewed by the Finance Officer.

Non-competitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:⁶²

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

Such purchases shall also comply with state law, SDCL Chapters 5-18A to 5-18D.

C. Contract Cost and Price

For every procurement action in excess of \$250,000 (including contract modifications), the City must perform a cost or price analysis. The method and degree of analysis is dependent upon the unique procurement situation.⁶³ As a starting point, the City must make independent estimates before receiving bids or proposals.

⁶² 2 CFR 200.320(f).

⁶³ 2 CFR 200.323(a).

The city must negotiate profit as a separate element of the price for each contract (1) in which there is no price competition, and (2) in all cases where cost analysis is performed.⁶⁴ To establish a fair and reasonable profit, the City must give consideration 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. 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 2 CFR Part 200 Subpart E.⁶⁵ The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.⁶⁶

The City may only use a time and materials type contract after a determination that no other contract is suitable, and only if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the City is the sum of (1) the actual cost of materials, and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. In such contracts, the City shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.⁶⁷

D. Contractor Selection

Contracts must be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the contract.⁶⁸ Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The city shall maintain records detailing the history of the procurement.⁶⁹ These records shall include, but are not 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.

⁶⁴ 2 CFR 200.323(b).

⁶⁵ 2 CFR 200.323(c).

⁶⁶ 2 CFR 200.323(d).

⁶⁷ 2 CFR 200.318(j).

⁶⁸ 2 CFR 200.318(h).

⁶⁹ 2 CFR 200.318(i).

IX. CONFLICTS OF INTEREST

This policy shall affirm standards of conduct established to ensure that Council members and employees avoid potential and actual conflicts of interest, as well as the perception of a conflict of interest.

A. Conflicts of Interest for Elected and Appointed Officials of City

The City has adopted Resolution 2016-096 concerning conflicts of interest among Common Council members, public officials, and officers of the City. *See Attachment D.*

B. Standards of Conduct

The City maintains the following standards of conduct covering conflicts of interest and governing the actions of its employees and officers engaged in the selection, award and administration of contracts supported by a Federal award.

No employee, officer, or agent may participate in the selection, award or administration of a contract supported by a federal award if s/he has a real or apparent conflict of interest, as well as any other circumstance in which the employee, Council member, any member of his/her immediate family, his/her business partner, or an organization which employs or is about to employ any of them, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.⁷⁰

The officers, employees, and agents of City may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value. Gifts of a nominal value may be accepted in accordance with Council policy.

C. Organizational Conflicts

Organizational conflicts of interest may exist when due to the City's relationship with a subsidiary, affiliated or parent organization that is a candidate for award of a contract in connection with federally funded activities, the City may be unable or appear to be unable to be impartial in conducting a procurement action involving a related organization.⁷¹

In the event of a potential organizational conflict, the potential conflict shall be reviewed by the City Attorney or designee to determine whether it is likely that the City would be unable or appear to be unable to be impartial in making the award. If such a likelihood exists, this shall not disqualify the related organization; however, the following mitigating measures shall be applied:

1. The organizational relationship shall be disclosed as part of any notices to potential contractors;

⁷⁰ 2 CFR 200.318(c)(1).

⁷¹ 2 CFR 200.318(c)(2).

2. Any City employees or officials directly involved in the activities of the related organization are excluded from the selection and award process;
3. A competitive bid, quote or other basis of valuation is considered; and
4. The Council has determined that contracting with the related organization is in the best interests of the program involved.

D. Investigation

Investigations based on reports of perceived violations of this policy shall comply with Resolution No. 2016-096 as well as any governing state and federal laws and regulations. No person sharing in the potential conflict of interest being investigated shall be involved in conducting the investigation or reviewing its results. In the event an investigation determines that a violation of this policy has occurred, the violation shall be reported to the federal awarding agency in accordance with that agency's policies and the City shall take prompt, corrective action to ensure that such conduct ceases and will not recur.

Code of Federal Regulations
Title 2. Grants and Agreements (Refs & Annos)
Subtitle A. Office of Management and Budget Guidance for Grants and Agreements (Refs & Annos)
Chapter II. Office of Management and Budget Guidance (Refs & Annos)
Part 200. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Refs & Annos)
Subpart E. Cost Principles
General Provisions for Selected Items of Cost

2 C.F.R. § 200.431

§ 200.431 Compensation—fringe benefits.

Effective: September 10, 2015
Currentness

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) Leave. The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447 Insurance and indemnification); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) Insurance. See also § 200.447 Insurance and indemnification, paragraphs (d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) Automobiles. That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) Pension Plan Costs. Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the “Cost Accounting Standard for Composition and Measurement of Pension Costs” (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) Post-Retirement Health. Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) Severance Pay.

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

- (i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.
- (ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.
- (3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.
- (4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.
- (5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.
- (j)(1) For IHEs only. Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.
- (2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.
- (3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.
- (k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

- (1) The costs meet the requirements of Basic Considerations in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs of this subpart;
- (2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and
- (3) The costs are not otherwise borne directly or indirectly by the Federal government.

Credits

[79 FR 75886, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

AUTHORITY: 31 U.S.C. 503

Current through Nov. 29, 2018; 83 FR 61335.

End of Document

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Code of Federal Regulations

Title 2. Grants and Agreements (Refs & Annos)

Subtitle A. Office of Management and Budget Guidance for Grants and Agreements (Refs & Annos)

Chapter II. Office of Management and Budget Guidance (Refs & Annos)

Part 200. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Refs & Annos)

Subpart E. Cost Principles

General Provisions for Selected Items of Cost

2 C.F.R. § 200.430

§ 200.430 Compensation—personal services.

Effective: December 26, 2014

Currentness

(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this Part, and that the total compensation for individual employees:

- (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
- (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
- (3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(b) Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) Professional activities outside the non-Federal entity. Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) Unallowable costs.

(1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) Special considerations. Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) Nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) Institutions of higher education (IHEs).

(1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing

substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) Salary basis. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) Intra–Institution of Higher Education (IHE) consulting. Intra–IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra–IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non–Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non–Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non–Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) Periods outside the academic year.

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) Part-time faculty. Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) Sabbatical leave costs. Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) Salary rates for non-faculty members. Non-faculty full-time professional personnel may also earn “extra service pay” in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) Standards for Documentation of Personnel Expenses

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vii)¹ Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR Part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the

requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

Credits

[79 FR 75886, Dec. 19, 2014]

AUTHORITY: 31 U.S.C. 503

Current through Nov. 29, 2018; 83 FR 61335.

Footnotes

1 So in original; there is no subsection (i)(1)(vi). See 78 FR 78647.

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Attachment B

Helpful Questions for Determining Whether Costs are Allowable –

In addition to applying the cost principles and standards described above, City staff involved in expending federal funds should ask the following questions when assessing the allowability of a particular cost:

1. Is the proposed cost allowable under the relevant program?
2. Is the proposed cost consistent with an approved program plan and budget?
3. Is the proposed cost consistent with program specific fiscal rules? For example, the City may be required to use federal funds only to supplement the amount of funds available from nonfederal (and possibly other federal) sources, or only as a match for funds from nonfederal sources.
4. Is the proposed cost consistent with specific conditions imposed on the grant (if applicable)?
5. Is the proposed cost consistent with the underlying needs of the program? For example, program funds must benefit the public service or infrastructure need for which they are allocated.
6. Will the cost be targeted at addressing specific areas of weakness that are the focus of the program, as indicated by available data?
7. Is the proposed cost for the acquisition of unnecessary or duplicative items? Could the procurements be consolidated or broken apart to obtain a more economical purchase?¹
8. Could the items to be purchased be acquired utilizing state and local intergovernmental agreements or inter-entity agreements for procurement or use of common or shared goods and services?²
9. Could the items be acquired through federal excess and surplus property in lieu of purchasing new equipment and property whenever such purchase is feasible and reduces project costs?³

Any questions related to specific costs should be forwarded to the Department Director who shall consult with the City's Finance Officer and Attorney's Officer for clarification as appropriate.

¹ 2 CFR 200.318(d).

² 2 CFR 200.318(e).

³ 2 CFR 200.318(f).

The selected item of cost addressed in Part 200 includes the following (in alphabetical order):

<u>Item of Cost</u>	<u>Citation of Allowability Rule</u>
Advertising and public relations costs	2 CFR § 200.421
Advisory councils	2 CFR § 200.422
Alcoholic beverages	2 CFR § 200.423
Alumni/ae activities	2 CFR § 200.424
Audit services	2 CFR § 200.425
Bad debts	2 CFR § 200.426
Bonding costs	2 CFR § 200.427
Collection of improper payments	2 CFR § 200.428
Commencement and convocation costs	2 CFR § 200.429
Compensation – personal services	2 CFR § 200.430
Compensation – fringe benefits	2 CFR § 200.431
Conferences	2 CFR § 200.432
Contingency provisions	2 CFR § 200.433
Contributions and donations	2 CFR § 200.434
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	2 CFR § 200.435
Depreciation	2 CFR § 200.436
Employee health and welfare costs	2 CFR § 200.437
Entertainment costs	2 CFR § 200.438
Equipment and other capital expenditures	2 CFR § 200.439
Exchange rates	2 CFR § 200.440
Fines, penalties, damages and other settlements	2 CFR § 200.441
Fund raising and investment management costs	2 CFR § 200.442
Gains and losses on disposition of depreciable assets	2 CFR § 200.443
General costs of government	2 CFR § 200.444
Goods and services for personal use	2 CFR § 200.445
Idle facilities and idle capacity	2 CFR § 200.446
Insurance and indemnification	2 CFR § 200.447
Intellectual property	2 CFR § 200.448
Interest	2 CFR § 200.449
Lobbying	2 CFR § 200.450
Losses on other awards or contracts	2 CFR § 200.451
Maintenance and repair costs	2 CFR § 200.452
Materials and supplies costs, including costs of computing devices	2 CFR § 200.453
Memberships, subscriptions, and professional activity costs	2 CFR § 200.454
Organization costs	2 CFR § 200.455
Participant support costs	2 CFR § 200.456

<u>Item of Cost</u>	<u>Citation of Allowability Rule</u>
Plant and security costs	2 CFR § 200.457
Pre-award costs	2 CFR § 200.458
Professional services costs	2 CFR § 200.459
Proposal costs	2 CFR § 200.460
Publication and printing costs	2 CFR § 200.461
Rearrangement and reconversion costs	2 CFR § 200.462
Recruiting costs	2 CFR § 200.463
Relocation costs of employees	2 CFR § 200.464
Rental costs of real property and equipment	2 CFR § 200.465
Selling and marketing costs	2 CFR § 200.467
Specialized service facilities	2 CFR § 200.468
Termination costs	2 CFR § 200.471
Training and education costs	2 CFR § 200.472
Transportation costs	2 CFR § 200.473
Travel costs	2 CFR § 200.474

Code of Federal Regulations
Title 2. Grants and Agreements (Refs & Annos)
Subtitle A. Office of Management and Budget Guidance for Grants and Agreements (Refs & Annos)
Chapter II. Office of Management and Budget Guidance (Refs & Annos)
Part 200. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Refs & Annos)
Subpart D. Post Federal Award Requirements
Procurement Standards

2 C.F.R. § 200.321

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

Effective: December 26, 2013
Currentness

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

AUTHORITY: 31 U.S.C. 503

Current through Nov. 29, 2018; 83 FR 61335.

End of Document

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11/30/16 10

10/11/16

Resolution 2016-096

A RESOLUTION ADOPTING A CONFLICT OF INTEREST POLICY FOR ELECTED AND APPOINTED OFFICIALS OF THE CITY OF RAPID CITY.

WHEREAS, South Dakota Codified Laws (SDCL) Section § 1-56-10 requires that all non-state agencies receiving state grants and awards from a state agency adopt and enforce a conflict of interest policy; and

WHEREAS, the City of Rapid City receives millions in dollars from the State of South Dakota either directly or through federal pass-through funds which will be subject to the statutory requirement that it enforce a conflict of interest policy; and

WHEREAS, while provisions addressing conflicts of interest for municipal officials currently exist in state law, the Common Council wishes to adopt a conflict of interest policy that incorporates these statutory requirements and assists its elected and appointed officials in recognizing, disclosing, and avoiding conflicts of interests; and

WHEREAS, adopting a conflict of interest policy will clarify expectations from the public when elected and appointed officials are conducting City business; and

WHEREAS, the City of Rapid City deems it is in the best interest of the City to adopt this Conflict of Interest Policy for the Common Council and for all elected and appointed officials of the City.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that there is hereby established the following Conflict of Interest policy, which in its entirety reads as follows:

RAPID CITY CONFLICT OF INTEREST POLICY FOR ELECTED AND APPOINTED OFFICIALS

The City of Rapid City seeks to prevent and avoid any conflicts of interest in the conduct of its business operations and to avoid the appearance of such conflicts to the public it serves. Each elected and appointed official has the duty to place the interests of the citizens of Rapid City foremost in any dealings on behalf of the City and has a continuing responsibility to comply with this Policy. This policy applies to any elected or appointed official who serves on the Common Council, who serves on any board, committee, or commission of the City, or who is appointed to serve the City in any capacity pursuant to SDCL Chapter 9-14 (collectively referred to as "Official").

Conflicts of interest may exist when an Official, or an immediate family member of such Official, has a personal or financial interest clearly separate from that of the general public on a matter before the Official. An immediate family member for purposes of this policy is any person related to an Official within the first degree of consanguinity and includes a spouse, parent, child, grandparent, grandchild or an individual claimed by the Official or his/her spouse as a dependent for federal income tax purposes. Such conflicts of interest may be financial or personal, direct or indirect, and the existence of a conflict of interest is dependent upon the

unique facts of a particular situation.

It is the policy of the City of Rapid City to follow state law regarding conflicts of interest, and this policy is not intended to be more strict than the applicable requirements of state law. Generally, state law provides that an Official may not have a personal financial interest in any City transaction for the purchase of labor or services, materials or supplies, or real or personal property that belongs to the City. An exception to this general rule may apply if the transaction is reasonable and just, if the contract is made without fraud or deceit, and if the Official discloses the conflict and recuses himself/herself from participation in the decision for which there is a conflict of interest. These exceptions include the following:

- (1) A contract for \$5,000 or less;
- (2) A contract awarded by competitive bidding procedures if more than one competitive bid is submitted or, if only one competitive bid is submitted, the procedures in SDCL 6-1-2.1 have been followed;
- (3) A contract for professional services;
- (4) A contract awarded off of the state contract list at the established price or less;
- (5) A contract that does not require competitive bidding when there is no other source of supply or services and when the total of any such contracts does not exceed \$50,000 for a public improvement or \$25,000 for a contract for supplies or services; or
- (6) A contract with an entity for which competitive bidding is not required unless the majority of the governing body are members or stockholders who collectively have a controlling interest, or any governing board Official is an officer or manager or such entity.

No Department Director who is authorized in his/her official capacity to sell or lease any property or to make any contract may be personally interested, directly or indirectly, in any such sale, lease, or contract.

Procedure When Conflicts of Interest Exist

If an Official who is a member of the City Council, or a board, committee, or commission has a disqualifying interest in a matter before the body on which the Official serves, he/she shall disclose the conflict to the body prior to its consideration of the matter. Once this disclosure is made, the Official shall not formally participate in the official discussion, any executive session, or any vote on the matter. If the Official has a conflict of interest in the matter and chooses to participate in the discussion, the Official should leave the dais and speak on the item from the audience as a member of the public.

If it is alleged that an Official has a disqualifying conflict of interest in a matter before the City Council, or a board, committee, or commission on which the Official serves, and if the Official

does not voluntarily refrain from participating in the matter, then the Official may be disqualified from officially participating in consideration of the matter upon a two-thirds vote of the Council, board, committee, or commission on which the Official serves. The City Council, or a board, committee, or commission voting to disqualify such Official must make a specific finding of the disqualifying conflict of interest for which it has excluded the Official from participating in the matter under consideration. An Official disqualified in this manner may not participate in the official discussion, any executive session, or any vote on the matter.

If any Official desires assistance to determine if that Official, or another Official, has a disqualifying conflict of interest, the Official may request an advisory opinion from the City Attorney's Office. Such opinion shall be made available to all members of the City Council, or the board, committee, or commission about which the opinion is provided, but shall not be available for public inspection unless a majority of the members of the City Council or the board, committee, or commission to which the opinion is provided votes to make such opinion public.

Distribution of Policy to Officials

Upon adoption of this policy, the City Attorney's Office shall distribute this Conflict of Interest Policy and all pertinent state law provisions to all City Officials. The policy and state law provisions shall be timely provided to all newly elected or appointed Officials.

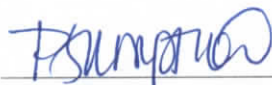
DATED this 20 day of January, 2017.

CITY OF RAPID CITY



Mayor

ATTEST:



Finance Officer

(SEAL)

South Dakota Statutes Concerning Conflicts of Interest for Municipal Officials

SDCL 6-1-1. Local officer's interest in public purchase or contract unlawful--Contract void.

It shall be unlawful for any officer of a county, municipality, township, or school district, who has been elected or appointed, to be interested, either by himself or agent, in any contract entered into by said county, municipality, township, or school district, either for labor or services to be rendered, or for the purchase of commodities, materials, supplies, or equipment of any kind, the expense, price, or consideration of which is paid from public funds or from any assessment levied by said county, municipality, township, or school district, or in the purchase of any real or personal property belonging to the county, municipality, township, or school district or which shall be sold for taxes or assessments or by virtue of legal process at the suit of such county, municipality, township, or school district. Such contract shall be null and void from the beginning.

SDCL 6-1-2. Conditions under which contract with local officer permitted--Contract voidable if conditions not fully met.

The provisions of § 6-1-1 are not applicable if the contract is made pursuant to any one of the conditions set forth in the following subdivisions, without fraud or deceit. However, the contract is voidable if the provisions of the applicable subdivision are not fully satisfied or present at the time the contract was entered into:

- (1) Any contract involving five thousand dollars or less regardless of whether other sources of supply or services are available within the county, municipality, township, or school district, if the consideration for such supplies or services is reasonable and just;
- (2) Any contract involving more than five thousand dollars but less than the amount for which competitive bidding is required, and there is no other source of supply or services available within the county, municipality, township, or school district if the consideration for such supplies or services is reasonable and just and if the accumulated total of such contracts paid during any given fiscal year does not exceed the amount specified in § 5-18A-14;
- (3) Any contract with any firm, association, corporation, or cooperative association for which competitive bidding is not required and where other sources of supply and services are available within the county, municipality, township or school district, and the consideration for such supplies or services is reasonable and just, unless the majority of the governing body are members or stockholders who collectively have controlling interest, or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association, in which case any such contract is null and void;

- (4) Any contract for which competitive bidding procedures are followed pursuant to chapter 5-18A or 5-18B, and where more than one such competitive bid is submitted;
- (5) Any contract for professional services with any individual, firm, association, corporation, or cooperative, if the individual or any member of the firm, association, corporation, or cooperative is an elected or appointed officer of a county, municipality, township, or school district, whether or not other sources of such services are available within the county, municipality, township, or school district, if the consideration for such services is reasonable and just;
- (6) Any contract for commodities, materials, supplies, or equipment found in the state contract list established pursuant to § 5-18D-6, at the price there established or below;
- (7) Any contract or agreement between a governmental entity specified in § 6-1-1 and a public postsecondary educational institution if an employee of the Board of Regents serves as an elected or appointed officer for the governmental entity, and if the employee does not receive direct compensation or payment as a result of the contract or agreement; and
- (8) Any contract with any firm, association, corporation, individual, or cooperative association for which competitive bidding procedures are followed pursuant to chapter 5-18A, and where only one such competitive bid is submitted, provided the procedures established in § 6-1-2.1 are followed.

SDCL 6-1-2.1. Conditions under which competitive bid pursuant to chapter 5-18A from officer of governing body may be accepted.

If competitive bidding procedures have been followed pursuant to chapter 5-18A, and the bid notice has been placed on the central bid exchange pursuant to § 5-18A-13 for two weeks prior to the opening of bids, a bid from an officer of the governing body may be opened and accepted provided the consideration is reasonable and just as determined by the governing body or a disinterested governmental entity.

SDCL 6-1-3. Deposit of funds permitted despite bank connection of public officer.

A bank may be designated as the official depository of county, municipal, township, or school district funds, notwithstanding that an officer, director, stockholder, or employee of a bank is an elected or appointed officer or treasurer of such county, municipality, township, or school district.

SDCL 6-1-17. Official prohibited from discussing or voting on issue if conflict of interest exists--Legal remedy.

No county, municipal, or school official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of

interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:

- (1) The official has a direct pecuniary interest in the matter before the governing body; or
- (2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.

SDCL 6-1-18. Officer may consider relevant information from any source--Reliance on experience.

An elected or appointed municipal, county, or township officer may receive and consider relevant information from any source to perform the duties of office. An elected or appointed municipal, county, or township officer may rely on his or her own experience and background on any official matters, subject to the applicable law and rule concerning recusal and disqualification of a public officer.

SDCL 6-13-7. Persons prohibited from purchasing surplus property--Exception.

No governing board member, any officer of a county, municipality, township, or school district, who has been elected or appointed, or real property owner acting as an appraiser may purchase the surplus property except at public auction.

SDCL 3-16-7. Officer's interest in public contract as misdemeanor.

No public officer who is authorized to sell or lease any property, or make any contract in the officer's official capacity may become voluntarily interested individually in any sale, lease, or contract, directly or indirectly with such entity. A violation of this section is a Class 2 misdemeanor unless the act is exempted by law.

SDCL 9-14-3. Appointment of officers. Such officers as needed and provided for by ordinance shall be appointed.

Each appointive officer of a municipality governed by a mayor and common council shall be appointed by the mayor with the approval of the council, and in other municipalities, each officer shall be appointed by a majority vote of the members elected to the governing body, except as provided in the city manager law and subject to the provisions of the civil service applying to employces, police, and firefighters. Such officers shall be appointed annually or at intervals determined by the governing body.

**SDCL 9-14-37. Neglect of duty or misconduct by municipal officer as misdemeanor--
Removal from office.**

It is a Class 2 misdemeanor for any member of the governing body or other municipal officer to commit a palpable omission of duty or to intentionally commit oppression, misconduct, or malfeasance in the discharge of the duties of his office. Upon conviction of a violation of this section, the court in which such conviction is had may in its discretion enter an order removing the member of the governing body or other officer so convicted from his office.

SDCL 1-56-10. Grant agreements with nonstate agencies to be displayed on website.

The grant agreement for each grant, pass-through grant, or any other award granted by a state agency to a nonstate agency after July 1, 2016, shall be displayed on the website created pursuant to § 1-27-45.

Each grant agreement shall include an attestation by the award recipient or sub-recipient that:

- (1) A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;
- (2) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;
- (3) An effective internal control system is employed by the recipient's or sub-recipient's organization; and
- (4) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

Additional rules regarding candidates' financial interest statements are found in SDCL Chapter 12-25. Additional rules or laws not provided here may impose additional requirements concerning conflicts of interest; this list will be updated as new laws are adopted or amended.

Attachment E

The following link is for the South Dakota Local Government Guide for Acquisitions, Disposals and Exchanges (Bid Booklet)

<http://legislativeaudit.sd.gov/resources/Bid%20Booklet%202018.pdf>