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CITY OF BROOK PARK, OHIO

ORDINANCE NO: 11302-2022

INTRODUCED BY: MAYOR ORCUTT

AN ORDINANCE ADOPTING A PROCUREMENT POLICY FOR ALL PURCHASES
UTILIZING FEDERAL FUNDS, AND DECLARING AN EMERGENCY

WHEREAS, the Federal Government has mandated that municipalities utilizing federal funds establish and follow a Procurement Policy; and

WHEREAS, the City of Brook Park (City), on a regular basis, receives federal funds through grants and other sources; and

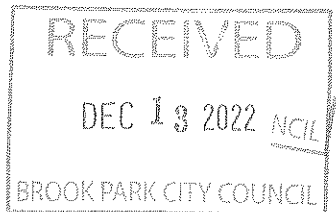
WHEREAS, it is necessary for the City of Brook Park to establish a Procurement Policy for purchases using federal funds.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The City hereby adopts the Procurement Policy attached as Exhibit "A".

SECTION 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Sections 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to adopt the Procurement Policy for all purchases utilizing federal funds; provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.



PASSED:

December 20, 2022

M. P. R. Vecchio
PRESIDENT OF COUNCIL

ATTEST:

Carol Johnson
Clerk of Council

APPROVED:

Edmund A. Gutt
MAYOR

CERTIFICATE

Carol Johnson, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance / Resolution

No. 11302-2022

passed on the 20 day of December
20 22 by said council.

Carol Johnson
Clerk of Council

12-20-22
DATE

I, Carol Johnson, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing 12-21-22

Carol Johnson
CAROL JOHNSON
Clerk of Council

	Yea	Nay
Troyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Coyne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS

[Signature]
DIRECTOR OF LAW

CITY OF BROOK PARK PROCUREMENT POLICY FOR ALL PURCHASES UTILIZING FEDERAL FUNDS

This policy has been adopted by the City of Brook Park to assure that the City utilizes federal funds in compliance with the Code of Federal Regulations (CFR), Title 2 Parts 200.318 to 200.326.

I. **General Procurement Standards (2 CFR Part 200.318)**

- A. Procurements by the City when utilizing federal funds shall conform to applicable Federal law and the standards identified in this policy.
- B. The City shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchases.
- C. No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or any organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the City may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Any Employee determined to be in violation of this section could be subject to discipline action up to and including termination. Any Elected Official determined to be in violation of this section could be subject to prosecution and/or recall of their position. (See the City's Ethics Policy.)
- D. The City will consider consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- E. The City, to the extent possible, shall utilize state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- F. The City, to the extent possible, shall utilize federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- G. The City, to the extent possible, shall utilize use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable

opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

- H. The City, to the extent possible, shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. (See also 2 CFR §200.213 Suspension and Debarment and R.C. § 9.242, 125.25, 153.02 and 5513.06.)
- I. The City, to the extent possible, shall maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following:
 - 1. Rationale for the method of procurement;
 - 2. Selection of contract type;
 - 3. Contractor selection or rejection; and
 - 3. The basis for the contract price.
- J. The City, to the extent possible, shall utilize a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contracts are defined as a contract whose cost to the City is the sum of:
 - 1. The actual cost of materials; and
 - 2. City labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- K. The City, to the extent possible, shall, in accordance with good administrative practice and sound business judgment, utilize mediation and binding arbitration for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

II. **Competition (2 CFR Part 200.319)**

- A. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive include but are not limited to:

1. Placing unreasonable requirements on firms for them to qualify to do business;
 2. Requiring unnecessary experience and excessive bonding;
 3. Noncompetitive pricing practices between firms or between affiliated companies;
 4. Noncompetitive contracts to consultants that are on retainer contracts;
 5. Organizational conflicts of interest;
 6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
 7. Any arbitrary action in the procurement process.
- B. The City shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- C. The City ensures that all solicitations:
1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

- D. The City shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the City shall not preclude potential bidders from qualifying during the solicitation period.

III. Methods of Procurement to be Followed (2 CFR Part 200.320)

The City shall use one of the following methods of procurement when purchasing items with federal funds.

- A. Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$10,000. To the extent practicable, the City shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations.
- B. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (\$50,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- C. Procurement by sealed bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - 1. For sealed bidding to be feasible, the following conditions should be present:
 - i. a complete, adequate, and realistic specification or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price;
 - 2. If sealed bids are used, the following requirements apply:
 - i. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response prior to the date set for opening

the bids, for local, and tribal governments, and the invitation for bids must be publicly advertisements;

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

D. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- 1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- 2. Proposals must be solicited from an adequate number of qualified sources;
- 3. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- 4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- 5. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional

services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- E. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
1. The item is available only from a single source;
 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity;
 4. After solicitation of several sources, competition is determined inadequate; or
 5. The federal funds are received via an Assistance to Firefighter Grant (AFG), which otherwise complies with all provisions set forth in this policy. This exception is detained in Section IX.

IV. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR Part 200.321)

- A. The City shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- B. Affirmative steps must include:
1. Placing qualified small and minority businesses, and women's business enterprises on solicitation lists;
 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

V. Contract Cost and Price (2 CFR Part 323)

- A. The City shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, The City shall make independent estimates before receiving bids or proposals.
- B. The City shall negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- C. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the City.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

VI. Federal Awarding Agency or Pass-Through Entity Review (2 CFR Part 200.324)

- A. The City shall make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document.
- B. The City shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

1. The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 2. the procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 3. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 4. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- C. The City is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
1. The City may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
 2. The City may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification program, the Federal awarding agency may rely on written assurances from the City that it is complying with these standards. The City must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

VII. Bonding Requirements (2 CFR Part 200-325)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the binding policy and requirements of the City providing that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all of the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

VIII. Contract Provisions (2 CFR Part 200.326)

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the City under the Federal award must contain provisions covering the following, as applicable.

- A. Contracts for **more than the simplified acquisition threshold currently set at \$250,000**, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of **\$10,000** must address termination for cause and for convenience by the City including how it will be affected and the basis for settlement.
- C. Equipment Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "**federally assisted construction contract**" in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 61-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime **construction contracts in excess of \$2,000** awarded by the City must include a provision for compliance with the Davis-Bacon

Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The City shall report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act" (40 U.S.C. 3145), as supplemented by the Department of Labor Regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from The United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair or public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in **excess of \$100,000 that involve the employment of mechanics or laborers** must include a provision for compliance with 40 U.S.C 3702 and 3704, as supplemented by Department of Labor Regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basis rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in **excess of \$150,000** must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. **Debarment and Suspension** (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), Department and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award **exceeding \$100,000** must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from each tier up to the non-Federal award.
- J. See §200.322 Procurement of recovered materials if applicable.

(§200.322 Procurement of recovered materials: A Non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy

and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.)

IX. Assistance to Firefighter Grant (AFG)

In addition to Ohio's own state purchasing program, Ohio also permits political subdivisions to purchase via other state or national joint purchasing programs. Specifically, R.C. 9.48 (joint purchasing programs) provides:

- (A) As used in this section, "political subdivision" has the same meaning as in section 2744.01 of the Revised Code and includes a county hospital as defined in section 339.01 of the Revised Code.
- (8) A political subdivision may do any of the following:

- (2) Participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the purchasing political subdivision is eligible for membership.

The Department Homeland Security-Federal Emergency Management Agency requires competitive bidding in the use of Assistance to Firefighter Grant (AFG) program funds. Title 44, Section 152 governs most of the AFG program generally. However, 2 C.F.R. Sections 200.317 to 200.327 establishes specific, uniform requirements for grants. (See Sections I to VIII above.)

44 C.F.R. Section 13.36(b)(5) provides specific authority for an award grantee to enter into intergovernmental agreements to save money by avoiding duplication of effort. FEMA leaves the means of procurement to the grantee's discretion, providing the grantee's standards conform to local, state and federal law. See 44 C.F.R. Section 13.36(b)(1). Since the most efficient option for most state and local entities is to piggyback an existing competitively awarded grant, state and local laws generally promote intergovernmental agreements. As set forth above, Ohio has taken this position as well.

Therefore, the City may procure vehicles, equipment or other items which are the subject of an AFG award utilizing the State of Ohio Cooperative Purchasing Program established by the Ohio Department of Administrative Services.

In addition, the City may utilize other state or national joint purchasing programs that also comply with the provisions set forth in Sections I through VIII above.

An example of such a non-Ohio State program is Sourcewell. Sourcewell is a State of Minnesota local government agency and service cooperative created under the law of the State of Minnesota (Minnesota Statutes Section 123A.21) that facilitates a competitive public solicitation and contract award process for the benefit of its 50,000+ participating entities across the United States and Canada. Sourcewell's solicitation process complies with State of Minnesota law and policies and results in cooperative contracting solutions from which Sourcewell's participating entities procure equipment, products, and services. In the United States, Sourcewell's contracts are available for use by, among others, federal and state governmental entities, cities, towns and counties, non-profit entities and other public entities.

The request for proposal process generally includes a pre-proposal conference, proposal submissions, a review of proposal requirements, opening of proposals (bids), valuation of the bids, and awards. Successful proposals are awarded a contract consistent with Minnesota law. Sourcewell also complies with the mandates of both the federal bidding requirements and R.C. 9.48.

In addition to Sourcewell, other possible cooperative purchasing programs would include NPP.Gov and the National Joint Powers Alliance (NJPAN).

Finally, the intergovernmental agreement (Sourcewell, et al.) alone does not satisfy the City's statutory duties for FEMA. The responsibility for meeting federal requirements (reporting, record keeping, etc.) continues to lie with the City. Therefore, the City must continue to perform its own due diligence to ensure that procedures comply with federal and state regulations.

Adopted: _____