



## Legislation Text

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File #: 23-1106, Version: 1

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### GRANT REQUEST

**Type Motion/Request here and complete the Grant Request Form Below:**

MOTION to allocate funds from the American Rescue Plan Act (ARPA) for the replacement of the following HVAC Systems:

- Ledyard Emergency Services Building at 11 Fairway Drive, \$200,000
- Ledyard Senior Citizens Facility at 12 Van Tassel Drive, \$155,000

**Background:**

There were several unanticipated HVAC failures at Town buildings over the last two years. This is coupled with need to rotate out aging assets and realignment of provisions based on current space usage:

- Town Hall: Failure of the A/C-heat pumps serving the front half of the building. The system supplying the rear half was of the same vintage. It was decided to proceed with comprehensive replacement. The \$80,000 project was funded through ARPA and is complete except for improvements in the Town Clerk Vault and replacement of the MIS split unit. This project was a combination of an Omni Partners government services bid for the equipment and CT State bid for the labor.
- Emergency Services Building (ESB): Multiple failures of heating and A/C. Phase 1 of the most urgent heating repairs involving straightforward replacement/reorientation was completed for about \$84,000 with associated electrical work, the bulk of which through CT State bid (Air Temp-\$80K, attached). A second estimate through Omni Partners (Trane) would have exceeded \$95,000 (attached), without miscellaneous associated work. Funds were drawn from the Building Upgrade Reserve account.

Remaining work included broader heating and A/C replacements that cannot be suitably accomplished apart from substantial realignment to meet present and prospective building utilization. Substantial effort has been put into this and is reflected the firm quote through a CT State bid proposal for \$190,000 (Air Temp, attached). This price is good until February 19, 2023.

- Senior Center: The Senior Center has been operating with partial A/C and also has original heating equipment that is relatively inefficient and also due for replacement. We have secured separate proposals for heating and A/C according to CT State bid pricing in the amounts of \$75,000 and \$72,000, respectively (Air Temp, attached) for a combined total of \$147K. These proposals are also good until February 19, 2023. We had previously received a separate proposal through Omni Partners government services bidding for the combined package in the amount of \$262K-\$293K (Trane, attached).

**Department Comments/Recommendation:**

Based on the relative complexity of what these HVAC projects involve, i.e., proposals were more or less design-build based on factors beyond simple replacement and the pricing climate has been extremely variable and volatile, I recommend going with the Air Temp offerings according to State Bid pricing, as has been done for recent Town Hall and Phase 1 ESB projects cited in the background. Going out to bid, while feasible of course, would require contract engineering services to establish appropriate and firm scopes of work according to the particular realignment of HVAC systems needed at this point.

Specifically, I recommend appropriating \$200,000 for the balance of the ESB HVAC work, which would cover the firm Air Temp \$190K proposal, associated other work, and contingency. For the Senior Center, I recommend appropriating \$155,000 for the combined cost of the firm Air Temp proposals, associated work, and contingency.

**Finance Director Comments/Recommendation:**

There are approximately \$580,000 of uncommitted ARPA funds as of this date. Any ARPA funds that remain uncommitted / unobligated as of December 31, 2024 and unexpended as of December 31, 2026 will need to be returned the funding source (federal government via the state).

Procurement rules under Uniform Guidance require competitive bidding for purchases in excess of \$250,00. As these projects fall under that threshold, utilizing State Bid pricing is acceptable.

**Mayor Comments/Recommendation:**

(Type text here)

**Meeting Action Detail:**

**Town Council Meeting 02/08/2023:**

File #: [231106](#) Version: 1

Type: Financial Business Request (FBR)

Title: MOTION to allocate funds from the American Rescue Plan Act (ARPA) for the replacement of the following HVAC Systems:

- Ledyard Emergency Services Building at 11 Fairway Drive, \$200,000
- Ledyard Parks and Recreation/ Senior Citizens Facility at 12 Van Tassel Drive, \$155,000

Moved: Saums Seconded: Ingalls

Action: Approved

Minute Note:

Moved by Councilor Saums, seconded by Councilor Ingalls

Discussion: Councilor Saums stated that he has been communicating with Public Works Director/Town Engineer Steve Masalin about these two HVAC System replacement projects (Emergency Services Building and the Parks and Recreation/Senior Citizens Facility). He provided some background noting the following:

- Emergency Services Building was constructed in the 2004 and had two separate heating systems:
  - (1) Phase I - Heating System for the Fire Apparatus Bays where the apparatus was housed was currently working fine. Councilor Saums provided some background noting that there were multiple failures of heating and A/C system in the building. He stated because of the urgency to provide heat in the Apparatus Bays that Phase I has been completed. He stated these heating repairs involved the straightforward replacement/reorientation, noting the total cost of the project was \$84,000 which included the associated electrical work. He also noted that the air handlers 3 & 4 in the Emergency Services Building have been taken care of, noting that the Modine Heaters were removed, and they installed radiant heat in the Apparatus Bays. He stated the Modine Heaters were reused where they could these types of heating units. He stated funds were drawn from the Building Upgrade Reserve Account to pay for this project. He stated Phase I was not part of tonight's request.
  - (2) Phase II - was the Heating System for the remainder of the building which included the Meeting Room, Offices, and Dormitory, which was the system that has failed and was the system that they were addressing tonight. He explained that that radiant heating in this part of the Emergency Services Building would not work, noting that they needed to replace the boiler and put in a cooling unit which would require a substantial realignment to meet present and prospective building needs. He explained that a quote was received through a CT State Bid proposal for \$190,000. The Air Temp proposal was attached to the agenda on the meeting portal; and that this price was good until February 19, 2023. He stated that Public Works Director/Town Engineer Steve Masalin has added some funding to cover electrical services that may be needed to support the project. He also noted although the Omni Partners Government Services Bidding (Trane) prepared a Bid that it was not completed; and therefore, was not attached to the Agenda on the meeting portal.
- Parks and Recreation/Senior Center Facility - Constructed in 1991:

Councilor Saums stated the Parks and Recreation/Senior Center has been operating with a partial A/C and had to use window air conditioning units last summer. He stated the 32-year-old building had the original heating equipment that was inefficient and was also due for replacement. He stated separate proposals for the heating and the air conditioning were obtained through the CT State Bid pricing in the amounts of \$75,000 and \$72,000, respectively (Air Temp proposal, was attached to the agenda on the meeting portal) for a combined total of \$147,000. He stated both of these proposals were also good until February 19, 2023. He stated that they had previously received a separate proposal through Omni Partners Government Services Bidding (Trane) for the combined package in the amount of \$262,000 - \$293,000.

Councilor Saums stated that Mr. Masalin works to use all of the different opportunities available to save administration time, to take advantage of the competitive bidding process in other ways, and to get the best possible price. He stated because the cost of these HVAC projects seemed to be expensive the Finance Committee discussed with Public Works Director/Town Engineer Steve Masalin the possibility of obtaining better pricing if they solicited bids outside of the State Bid List. He stated to solicit additional bids that it would require hiring an engineer to prepare a Request for Proposals (RFP); and they were not confident that the savings they might get by soliciting bids outside the State Bid

List, would pay for the engineering costs and the RFP. He went on to state that although they have had both good and bad experiences using the State Bid List process, that they have found that generally these opportunities were more viable than other approaches. He noted as an example at their October 12, 2022 meeting the Town Council voted to move forward with the State Bid List proposal for the construction of the concrete floor at the Town Green Vo-Ag Pole Barn, only after they spent more time and money to solicit additional bids, which came in higher than the State Bid proposal.

Councilor Saums stated they also discusses Councilor Marshall’s suggestion to consider replacing the existing HVAC Systems with a Geothermal System, noting that the Mayor has a Geothermal System in his house, which was installed during new construction. He stated it would not be advantageous to install a Geothermal System in an existing building because it needed to be coupled with spray foam insulation, to create a tight building envelope for the system to work and so that the electric costs would not soar, noting that during the winter the system used electricity to compress the water coming up from the well. He went on to explain in addition to trying to install spray foam insulation into the entire exterior wall cavities and roof trusses in an existing building, such as the Emergency Services Building, that it would also need to include costs for an engineering evaluation, the design work which would need to include integrating the system with the sites which were very tight, along with subterranean issues at both the Emergency Services Building and the Parks and Recreation/Senior Citizens Facility.

Councilor Ryan noted that some additional funding was included in both projects for other miscellaneous costs related to the projects such as electrical work, etc.

Councilor Paul stated from his personal experience in working in the field of HVAC systems that he was pleased that the town did not choose to use Trane, noting that they were typically more expensive, noting that they had proprietary parts, which could be harder to get, making the systems more expensive to maintain.

Councilor Saums concluded by stating that a bid waiver was not required for either of these two projects because they were using contractors on the State Bid List.

9 - 0 Approved and so declared

Action: Approved

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**Finance Committee Meeting 02/01/2023:**

**File #:** [231106](#) Version: 1

**Type:** Financial Business Request (FBR)

**Title:** MOTION to recommend the Town Council allocate funds from the American Rescue Plan Act (ARPA) for the replacement of the following HVAC Systems:

- Ledyard Emergency Services Building at 11 Fairway Drive, \$200,000
- Ledyard Parks and Recreation/ Senior Citizens Facility at 12 Van Tassel Drive, \$155,000

Moved: Ryan                      Seconded: Ingalls

Action: Recommend to Approve

**Minute Note:**

Moved by Councilor Ryan, seconded by Councilor Ingalls

Discussion: Councilor Saums stated that he has been communicating with Public Works Director/Town Engineer Steve Masalin about these two HVAC System replacement projects (Emergency Services Building and the Parks and Recreation/Senior Citizens Facility). He provided some background noting the following:

- Emergency Services Building had two separate heating systems:
  - (1) Heating System for the Fire Apparatus Bays where the apparatus was housed was working fine.
  - (2) Heating System for the remainder of the building which included the Meeting Room, Offices, and Dormitory was the system that has failed. He explained that that radiant heating in this part of the Emergency Services Building would not work, noting that the work required was to replace the boiler and put in a cooling unit.

Councilor Saums went on to state that he talked with Public Works Director/Town Engineer Steve Masalin about Councilor Marshall's January 27, 2023 e-mail and his suggestion to consider replacing the heating and cooling systems with Geothermal Systems. He stated Geothermal was great for new construction, noting the Mayor had a Geothermal System in his house. However, he explained because the Emergency Services Building already had a heating system that it would be a major undertaking to change to a Geothermal System. He deferred to Mr. Masalin to talk more about the process to completely change from an existing heating and cooling system to a Geothermal System.

Mayor Allyn stated when he had the Geothermal System installed in his new construction house, that the contractor explained that it could not be a stand-alone system. He stated that the Geothermal System needed to be coupled with spray foam insulation, to create a tight building envelope for the system to work and so that the electric costs would not soar, noting that during the winter the system used electricity to compress the water coming up from the well. However, he stated the work would involve trying to install spray foam insulation into the entire exterior wall cavities and roof trusses in an existing building, such as the Emergency Services Building noting that it would be tremendously challenging.

Public Works Director/Town Engineer Steve Masalin stated when he presented the HVAC System replacement projects for the Ledyard Emergency Services Building and the Ledyard Parks and Recreation/Senior Citizens Facility at the January 18, 2023 Finance Committee meeting that it was for exploratory purposes, noting that he did not expect the Committee to act on a motion that evening. He stated although he had the information that he was presenting this evening at that time, that he had not yet put the proposal/request package together.

Mr. Masalin addressed the suggestion to consider replacing the existing HVAC Systems with a Geothermal System, noting that he did not have much to add to what the Mayor explained this evening, except that the cost that was represented in Councilor Marshall's e-mail was not close to what it would cost to install a Geothermal System into an existing building. He stated in addition to the reasons that the Mayor noted, the installation of a Geothermal System would also include costs for an engineering evaluation, the design work which would need to include integrating the system with the sites which were very tight, along with subterrain issues at both the Emergency Services Building and the Parks and Recreation/Senior Citizens Facility.

Mr. Masalin stated that he frequently tried to use all of the different opportunities available to save administration time and to take advantage of the competitive bidding which was inherent to the process in other ways. He stated although the Gordian Group may have left them thinking that generally these things do not

work so well, however, he stated these opportunities were more viable than other approaches.

Mr. Masalin continued by providing some background noting that there were several unanticipated HVAC failures at Town buildings over the last two years. This was coupled with need to rotate out aging assets and the realignment of provisions based on current space usage:

- Town Hall: Failure of the A/C-heat pumps serving the front half of the building. The system supplying the rear half was of the same vintage. It was decided to proceed with comprehensive replacement. The \$80,000 project was funded through ARPA and currently complete, except for improvements in the Town Clerk's Vault and the replacement of the MIS split unit. This project was a combination of an Omni Partners Government Services Bid (Trane) for the equipment and CT State bid for the labor.
- Bill Library HVAC System was also replaced.
- Emergency Services Building Phase I (ESB) was built in 2004: Mr. Masalin stated there were multiple failures of heating and A/C system in the building. He stated because of the urgency to provide heat in the Apparatus Bays that Phase 1 has been completed. He stated these heating repairs involved the straightforward replacement/reorientation, noting the total cost of the project was \$84,000 which included the associated electrical work. He stated the bulk of project was completed through CT State Bid (Air Temp-\$80,000, attached to agenda on the meeting portal for informational purposes). He went on to note as a comparison that a second estimate for the heating system work was obtained through Omni Partners (Trane) in the amount of \$95,000, without the associated miscellaneous work, explaining the Omni Partners Government Services Bidding (Trane) Bid exceeded CT State Bid. He stated funds were drawn from the Building Upgrade Reserve Account to pay for this project. Phase I was not part of tonight's request.

Mr. Masalin went on to explain that the air handlers 3 & 4 in the Emergency Services Building have been taken care, noting that the Modine Heaters were removed and they installed radiant heat in the Apparatus Bays. He stated the Modine Heaters were reused where they could these types of heating units.

- Emergency Services Building Phase II (ESB): Mr. Masalin stated the remaining work at the Emergency Services Building included the broader heating and A/C replacements that cannot be suitably accomplished apart from substantial realignment to meet present and prospective building utilization. He explained that a substantial effort has been put into this and was reflected in the quote received through a CT State Bid proposal for \$190,000. The Air Temp proposal was attached to the agenda on the meeting portal; and that this price was good until February 19, 2023. He stated he has added some funding to cover electrical services that may be needed to support the project. He stated the Omni Partners Government Services Bidding (Trane) Bid was not completed; and therefore, was not attached to the Agenda on the meeting portal.
- Parks and Recreation/Senior Center Facility: Ms. Masalin stated the Parks and Recreation/Senior Center has been operating with a partial A/C and also had the original heating equipment that was relatively inefficient and also due for replacement. He stated separate proposals for the heating and the air conditioning have been secured according to CT State Bid pricing in the amounts of \$75,000 and \$72,000, respectively (Air Temp proposal, was attached to the agenda on the meeting portal) for a combined total of \$147,000. He stated both of these proposals were also good until February 19, 2023.

He stated that they had previously received a separate proposal through Omni Partners Government Services Bidding (Trane) for the combined package in the amount of \$262,000 - \$293,000.

Mr. Masalin stated a bid waiver was not required for either of these two projects because they were using contractors on the State Bid List.

It was noted that the Procurement Rules under Uniform Guidance require competitive bidding for purchases in excess of \$250,000. As these projects fall under that threshold, utilizing the State Bid pricing was acceptable

Councilor Ryan noted that age of both of these building stating that the new systems would be more efficient.

VOTE: : 3 - 0 Approved and so declared

Action: Recommend to Approve

The Finance Committee thanked Mr. Masalin for the information he presented this evening.

Mr. Masalin left the meeting at 5:50 p.m.

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**Finance Committee Meeting 1/18/2023:**

File #: [231081](#) Version: 1

Type: Financial Business Request (FBR)

Title: MOTION to recommend the Town Council allocate funds from the American Rescue Plan Act (ARPA) for the replacement of the following HVAC Systems:

- Ledyard Emergency Services Building at 11 Fairway Drive
- Ledyard Parks and Recreation/Senior Citizens Facility at 12 Van Tassel Drive

In addition, that the Public Works Director solicits bids for the projects in comparison to the cost estimates already obtained from the State Bid List.

Moved: Saums                      Seconded: Ingalls

Action: Recommend to Approve

**Minute Note:**

Councilor Saums stated that there were three items that were an unanticipated expense and he asked Public Works Director/Town Engineer Steve Masalin to provide an overview of the items.

Public Works Director/Town Engineer Steve Masalin stated this year there have been a number of HVAC issues this year noting the following:



- Town Hall HVAC System failed this past summer. The \$80,000 HVAC System was replaced using funding from the American Rescue Plan Act (ARPA).
- Bill Library HVAC System was also replaced.
- Emergency Services Building on Fairway Drive HVAC Systems failed (both heating and air conditioning). Mr. Masalin stated the system was 21 years old and he explained that they just completed heating system, which was paid for using the Building Maintenance Reserve in an unanticipated way.
- Parks and Recreation/Senior Citizens Facility on Van Tassel Drive HVAC Systems failed (both heating and air conditioning). Mr. Masalin noted the air conditioning system failed last summer and they had to use window units. He stated the heating system was limping along, noting the 32 year old original gas boiler was inefficient. It was also noted that this facility was used as a Cooling Center during the summer months.

Mr. Masalin went on to state cost estimates have obtained thru the State Bid List to complete the HVAC needs for both Emergency Services Building (\$190,000) and the Parks and Recreation/Senior Citizens Facility (\$150,000). He stated the combined estimated cost for the two buildings was \$340,000. He stated although one of these HVAC projects could be paid from the Building Maintenance Capital Reserve Account, that it would completely exhaust account and he noted that other scheduled projects on the docket would have to be set aside for lack of available funding. He stated he presently has not asked for more of an appropriation this year for the Building Maintenance Reserve Fund than has been made in the last few years. Therefore, he stated that they would need some supplemental funding to address both the Emergency Services Building and the Parks and Recreation/Senior Citizens Facility HVAC Systems, whether the funding comes from a special appropriation, grant funding which he did not see on the horizon.

Councilor Saums stated he was shocked by the estimated costs to replace the HVAC Systems at these two town facilities. He stated although there was some residual American Rescue Plan Act (ARPA) funding that they were planning to use the funds for the Ledyard Center Sewer Extension Project. However, he stated because the HVAC Systems were time sensitive that he would suggest using some ARPA funding for the HVAC Systems, noting that the town would more likely be able to obtain grant funding for the Ledyard Center Sewer Extension Project over HVAC Systems.

Mr. Masalin explained that the time sensitive part was because this State Bid Contractor had exclusive commitments from May 1- September 1, 2023. He stated if they do not move forward with these State Bid List proposals that they would need to find another contract through a different proposal and hope that the function costs would be similar.

Councilor Saums stated he had reservations about using the State Bid List Contractor because the cost seemed so high. Mr. Masalin noting in replacing the Town Hall HVAC System last summer that they were able to bring the Contractor in under the State Bid List because the cost was lower. Therefore, he stated if they were going to use the competitive bid process that they would have a different means of measurement of what their absolute dollar value would be based on that process. He also noted that they would have to prepare the scope and specifications for the bid process. Councilor Saums recognized the work and time involved to solicit complete bids and he stated that based on the cost estimates obtained that it may be worth it.

Councilor Ryan stated it was unfortunate that the HVAC Systems at both Emergency Services Building and the Parks and Recreation/Senior Citizens Facility have failed. He noted the American Rescue Plan Act (ARPA)



spreadsheet shows that there were some uncommitted funds that would support these projects. He stated that he agreed with Councilor Saums in that the town would have a better chance of obtaining grant funding for the Ledyard Center Sewer Extension Project than they would for the replacement of HVAC Systems. However, he stated this was not the situation they had hoped to be in. He stated that he also agreed that he agreed the longer they delayed the projects that the cost would only increase.

Finance Director Matthew Bonin stated the American Rescue Plan Act (ARPA) Funds had to be committed by December 31, 2024 and spent by December 31, 2026.

MOTION to recommend the Town Council allocate funds from the American Rescue Plan Act (ARPA) for the replacement of the following HVAC Systems:

- Ledyard Emergency Services Building at 11 Fairway Drive
- Ledyard Parks and Recreation/Senior Citizens Facility at 12 Van Tassel Drive

In addition, that the Public Works Director solicits bids for the projects in comparison to the cost estimates already obtained from the State Bid List.

Moved by Councilor Saums, seconded by Councilor Ingalls

Discussion: See above.

VOTE: 3- 0 Approved and so declared

Action: Recommend to Approve

**\*\*POST MEETING NOTE\*\*:** 1/19/2023 - This item was not included on the Town Council's January 25, 2023 Agenda.

Public Works Director Steve Masalin called Councilor Saums on Thursday (1/12/2023) after the Finance Committee meeting to say he had spoken with Buildings & Grounds Foreman Shawn Ruszczyk about getting bids for the HVAC work instead of using the State Bid List System. Mr. Ruszczyk provided more details about the HVAC Systems involved in the Emergency Services Building on Fairway Drive and Parks and Recreation/Senior Citizens Facility on Van Tassel Drive. Putting a Request for Proposals (RFP) together would be complicated due to the complexity of the systems and structures involved.

An Engineer would need to be hired to develop the specifications for the systems, and that doing so and managing the RFP would add cost to the process. Two quotes from Firms on the State Bid List have already been obtained.

Mr. Masalin asked that the Motion regarding the replacement of the HVAC Systems for these buildings not be included on the Town Council's January 25, 2023 Agenda because he would like to put more thought and detail into the project.

The use of ARPA Funding for the replacement of the HVAC Systems at the Emergency Services Building and the Parks and Recreation/Senior Citizens Facility would come back to the Finance Committee at a later time.

**Please Complete the Grant Request Form Below:**

TOWN OF LEDYARD

GENERAL GOVERNMENT  
GRANT APPLICATION POLICY AND PROCESS

The Ledyard Town Council will approve all grant applications submitted by the Town to any governmental agency or private foundation on behalf of the Town; and any items that are offered to the Town by any entity, and items taken in forfeiture by the Town. Every department, commission, or board acting on behalf of the Town of Ledyard when seeking grants or responding to an offer to the Town of grant funds or items must follow this policy and process.

Grants, for these purposes include:

1. Grants that require a Town match -- whether the match is a dollar figure, an in-kind contribution, or a combination thereof
2. Grants that are 100% funded
3. Items or services that are offered (“gifted”) to the Town such as land, equipment, buildings, or vehicles
4. Items that are taken by forfeiture and intended to be retained by the Town
5. Items granted to a fire company’s 501(c)3 organization but expected to be maintained and/or insured by Town operating dollars

When applying for any grant, the grant seeker will create a legislative file and attach a completed GRANT REQUEST FORM and any pertinent information about the grant and grantor. The legislative file will be set up to go the Town Council using the Finance Committee workflow.

**When applying for Federal funding, the grant seeker must include acknowledgement in the GRANT REQUEST FORM that they have read and understand the Federal Government procurement standards for federal funding in 2 CFR 200.318 through 200.325 (See Attachment 1).**

Amended and Approved by the Town Council: on: July 22, 2020

Linda C Davis

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Linda C. Davis, Chairman

Revisions: “General Government Grant Application Policy and Process” Adopted: May 8, 2018.

History: Paragraph 5 added the following: *“When applying for Federal funding, the grant seeker must include acknowledgement in the GRANT REQUEST FORM that they have read and understand the Federal Government procurement standards for federal funding in 2 CFR 200.318 through 200.325 (See Attachment 1).”*

Below the Form added: *FOR FEDERAL GRANTS: “I confirm that I have read and understand the federal general procurement standards in 2 CFR § 200.318 through 200.325”*

Added to the Policy Attachment 1 *“Code of Federal Regulations: 2 CFR”* to Policy.

**GRANT REQUEST FORM**

Requestor      Pubic Works Director      Date      January 19, 2023

Dept/Commission/Board

Name of Grant      American Rescue Plan Act (ARPA)

Type of Grant (State of CT, Federal, Private Foundation, Individual - if combination, explain)

Reason for Applying for this Grant

Replace HVAC Systems at Ledyard Emergency Services Building and the Ledyard Senior Citizens Facility

Amount of Town Match      No

Source of Town Match      N/A

In-Kind Match - Explain

N/A

**FOR FEDERAL GRANTS: I confirm that I have read and understand the federal general procurement standards in 2 CFR § 200.318 through 200.325 (Appendix 1)**

\_\_\_\_\_  
Signed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

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ATTACHMENT 1

Code of Federal Regulations: 2 CFR

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and

governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent 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 an 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 non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to 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) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to 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 non-Federal entity must 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 §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use 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 contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

#### §200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order 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 of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order 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 non-Federal entity must 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 non-Federal entity must have written procedures for procurement transactions. These procedures

must ensure 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 non-Federal entity must 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 non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(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 (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(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. 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) In order 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 on the basis of 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 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.

(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) [Reserved]

(f) 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; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

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

(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.

§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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold 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 non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must 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 non-Federal entity under Subpart E-Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must 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 non-Federal entity 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 non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### §200.325 Bonding requirements.

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

(a) 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.

(b) 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 the contractor's obligations under such contract.

(c) 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.

#### §200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200-Contract Provisions for non-Federal Entity Contracts Under Federal Awards.