



TOWN OF LEDYARD

741 Colonel Ledyard
Highway
Ledyard, CT 06339-1511

Legislation Details (With Text)

File #: 23-1439 **Version:** 2 **Name:**
Type: Financial Business Request (FBR) **Status:** Filed
File created: 3/28/2023 **In control:** Finance Committee
On agenda: 4/19/2023 **Final action:** 4/19/2023
Title: Discussion and possible action to increase one Senior Center Van Driver to full-time.

Attachments:

Date	Ver.	Action By	Action	Result
4/19/2023	2	Finance Committee	Discussed	
4/12/2023	1	Town Council	Motion Failed	Fail
4/5/2023	1	Finance Committee	Recommended for Approval	Pass
3/22/2023	1	Senior Citizens Commission	Recommended for Approval	Pass

FINANCIAL BUSINESS REQUEST (FBR)

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

Discussion and possible action to increase one Senior Center Van Driver to full-time.

Background:

The Senior Center has seen a tremendous increase in the demand for transportation services. Making a driver full time would allow us to increase our service hours and accommodate more medical rides. If the merger moves forward, we proposed moving the funds from the Community Health line into the Van Driver line to cover the cost of making a driver full time.

Department Comments/Recommendation:

(Type text here)

Finance Director Comments/Recommendation:

(Type text here)

Mayor Comments/Recommendation:

(Type text here)

Meeting Action Detail:

Finance Committee Meeting 04/19/2023:

File #: [23-1439](#) Version: 2
Type: Financial Business Request (FBR)

Title: Increase one Senior Center Van Driver to full-time.

Action: Discussed/Completed

Minute Note:

Councilor Saums provided some background noting at the April 5, 2023 Finance Committee meeting they forwarded to the Town Council a recommendation to submit a Grant Application to Senior Resources Agency on Aging -Title 3 in the amount of \$14,120 to be used to increase one Van Driver to full-time. However, he stated because the town's practice has been not to use grant funding for salaries, at their April 26, 2023 meeting the Town Council did not approve submitting the grant application, because after the grant funding ended, the budget would then have to take on the entire cost of salary for the full-time van driver.

Councilor Saums went on to note that Chairman Dombrowski referred increasing the one part-time Van Driver back to the Finance Committee to discuss whether the town needed a full-time Van Driver and the funding source.

Director of Parks & Recreation and Senior Citizens Scott Johnson, Jr., explained that the Senior Citizens Center has seen an increase in the demand for transportation services. He stated increasing the hours of one of the part-time Van Drivers to full-time would allow the Senior Citizens Center to increase their service hours and accommodate more medical rides. He stated in preparing the Fiscal Year 2023/2024 Budget that there was currently funding that could be used to increase one Van Driver to full-time noting the following:

- Van Driver Account included 8,000.
- Senior Citizens Health and Welfare Programs included \$14,000.
- Revenues (\$10,000) collected from the Senior Citizens Health and Welfare Programs (Senior Fees) were deposited into the General Fund; however, the Programs were not breaking even.
- Parks & Recreation's programs were self-sufficient, with 80% of the program fees going to the instructor; and 20% going to the Parks & Recreation Special Revenue Fund to be used to pay for their independent quarterly magazine that advertised their Programs.

Mr. Johnson went on to explain because the quarterly Events Magazine was now being paid for by the advertisements, that he proposed using the 20% collected from the Parks & Recreation programs, that was previously being used to independently advertise the Parks & Recreation Programs, to off-set the cost of the Senior Citizens programs that were currently not breaking even; and make them self-sufficient.

- By using 20% collected from the Parks & Recreation programs for the Senior Citizens programs that the \$14,000

of taxpayer dollars that were being budgeted to support (subsidize) the Senior Citizens Health and Welfare Programs could be then used to pay for the full-time Van Driver for the Senior Center.

Mr. Johnson continued by explaining that initially he thought the Senior Resources Agency on Aging -Title 3 Grant would be a good opportunity to off-set the cost to increase one Van Driver to full-time. However, he stated as he looked into the Grant further he did not think that applying for this Grant would be worth the administrative time and resources needed to comply with the month reporting.

Mr. Johnson stated should the Senior Citizens and Parks & Recreation be combined that they already had the \$14,000 in the Community Health & Welfare Program Account which could be transferred into the Van Driver Account for next year (fy 2/24). However, he stated by moving the \$14,000 from Community Health & Welfare Program Account that the Senior Program Revenues (\$10,000) that was going into the General Fund, would now be going into the Parks & Recreation Special Revenue Fund.

Councilor Ryan questioned the reason they would not want to apply for the \$14,000 Senior Resources Agency on Aging -Title 3 Grant. He stated if the town does not receive the Grant they could transfer the \$14,000 from the Senior Citizens Health and Welfare Programs Account to pay for the full-time Van Driver.

Mr. Johnson addressed the Grant reporting requirements, noting that initially he thought that he could use the information (miles, rides, etc.) that the Senior Center was currently using to report on the 5310 Van Grant. However, he stated in speaking with the Senior Resources Agency on Aging -Title 3 Grant they said that he would have to create a new survey that included a lot of other types of data, such as demonstrating that by providing transportation they were keeping someone from having to go into a full-time care facility, and a number of other things. He stated the administrative time and resources to provide the monthly reporting required for the Senior Resources Agency on Aging -Title 3 Grant was somewhat cost prohibited.

Councilor Ryan stated for clarification, that Mr. Johnson was stating that it was not worth seeking the Senior Resources Agency on Aging -Title 3 Grant because of the administrative burden of securing and executing grant. Mr. Johnson stated for those reasons and because the Town Council did not like to use grant funding for salaries, and because the \$14,000 needed to increase one Van Driver to full-time was currently available in the budget (fy 23/23). He explained once the funds for the Senior Citizens Health and Welfare Programs was removed from the budget, because they would become self-sufficient by being included with the Parks & Recreation Programs, that it would appear that the budget was being increased by \$14,000 the following budget year (fy 24/25) to support the full-time Van Driver.

Councilor Ryan stated he agreed with not using grant funding for salaries. However, he stated the only reason he would be on-board with applying for the Senior Resources Agency on Aging -Title 3 Grant was because they could keep the \$14,000 elsewhere in budget, so there would not be an increase. He stated if they applied for the grant, assuming the administrative burden would not be that high, that the grant could be used to off-set the expense. However, he stated if the town did not get the grant they would have the funding in-place to support increasing the Van Driver to full-time. Mr. Johnson stated because the Town Council did not approve applying for the Senior Resources Agency on Aging -Title 3 Grant at their April 12, 2023 meeting that the grant was no longer an option.

Councilor Saums stated the question was whether they needed a full-time Van Driver; or whether they could bring more drivers in on a per diem basis.

Mr. Johnson stated that the Van Driver was still working when he left this afternoon to come to this meeting. He stated with senior citizen population increasing the demand for services has also been increasing; however, he stated in the past they have not been able to meet the demand because they did not have enough van drivers. He stated they were currently transporting 15 - 16 people a day to-and-from the Senior Center, to medical appointments, senior trips etc.

Mr. Johnson addressed the issue of trying find van drivers to work per diem explaining that they have to have certain license to drive the van. He stated the part-time Van Driver that they were looking to increase to full-time previously ran a transportation company. He stated she accomplishes much more than their other van drivers. He stated she has been helping with the scheduling and has been able to coordinate picking-up multiple people at the same time and getting them to their medical appointments which was much more efficient than picking up one person at a time, and that she has also been helping the reporting as well. He stated if they did not have this van driver that they would have hire 3 - 4 people just to replace what she was currently doing. He went on to note that it would cost more to hire 3-4 per diem van drivers than it was going to cost to make this one van driver full-time. He also addressed the challenge to hire van drivers, noting that during the summer months they could find school bus drivers, however, during the winter months it was challenging.

The Finance Committee discussed whether a motion was needed to increase the hours of a position from part-time to full-time. It was noted because the budget would include the funding for the full-time hours that a motion was not necessary.

Mr. Johnson stated because of the uncertainty of combining the Senior Citizens with the Parks & Recreation that he proposed two budgets for the upcoming fiscal year (23/24) one budget keeping the two departments separate; and one budget with the two departments combined. He stated by increasing the hours from part-time to full-time that the Van Driver would go into the Town Hall Union, and he noted former Administrator of Human Resources Don Steinhoff stated the funding for the fringe benefits were already included in the budget to accommodate the full-time Van Driver.

Councilor Saums stated as they know the percentage of the senior citizens population was growing, noting that increasing services to accommodate them was inevitable. He stated because the funding was already in the Fiscal Year 2023/2024 Budget to support the full-time Van Driver that he did believe a motion was needed.

The Finance Committee agreed by consensus that a motion was not required to increase one part-time Van Driver to full-time to begin with the Fiscal Year 2023/2024.

The Finance Committee discussed the adjustments needed in the proposed Fiscal Year 2023/2024 Budget to accommodate the full-time Van Driver as follows:

Description	Expenses	Revenues	Change
Senior Center Fees		(\$10,000)	(\$10,000)
Wages-Van Driver	\$14,000		\$14,000

Councilor Saums stated that they would make the necessary adjustments to increase one part-time Van Driver to full-time and reduce the Senior Center Health and Welfare Revenues (Senior Fees) during their discussion of the Fiscal Year 2023/2024 Budget later this evening.

Action: Discussed/Completed

Town Council Meeting 04/12/2023:

File #: [23-1439](#) Version: 1

Type: Financial Business Request (FBR)

Title: MOTION to authorize the Mayor to submit a Grant Application to Senior Resources Agency on Aging -Title 3 in the amount of \$14,120 to be used to increase one Van Driver to full-time; with a local match \$8,000 to come from Account# 10130501-51800 (Part-time Wages).

Moved: Saums

Seconded: Ingalls

Action: Failed

Minute Note:

Moved by Councilor Saums, seconded by Councilor Ingalls

Discussion: Councilor Saums stated that Senior Citizens Director Scott Johnson Jr., was present this evening and asked Mr. Johnson to explain this request.

Senior Citizens Director Scott Johnson Jr., explained that the Senior Citizens Center has seen an increase in the demand for transportation services. He stated making one of the Van Drivers full-time would allow the Senior Citizens Center to increase their service hours and accommodate more medical rides. He stated should the merger of the Senior Citizens Commission and the Parks & Recreation Commission move forward, that he had initially proposed moving the funds (\$14,000) from the Community Health & Welfare Programs Account into the Van Driver line to cover the cost for the increased full-time hours. He explained by merging the Senior Citizens with the Parks & Recreation that the revenues from the Senior Programs, that were currently going into the General Fund, would go into the Parks & Recreation Special Revenue Account and the Senior Citizens Programs would then become self-sufficient. However, he stated if the town received the Senior Resources Agency on Aging -Title 3 Grant funding that they would be able increase the Van Driver's hours to full-time next year without having to use the Senior Citizens Community Health & Welfare Program funds.

Mr. Johnson went on to explain that \$8,000 has been included in the upcoming Fiscal Year 2023/2024 Budget for the Van Driver, which they could use for the town's local match to receive the grant funding. He stated the town would be eligible to apply/receive the Senior Resources Agency on Aging -Title 3 Grant for three consecutive years with the percentage of the funding slightly decreasing each year (85%; 80%; 75%). However, he stated once the three-year grant funding ended that the town would take on the entire cost for the full-time Van Driver. He stated it would be the Town Council's decision to apply for the grant and defer the cost to increase one of the part-time van drivers to full-time; or not to apply for the grant and fully fund the increased hours for the full-time van driver, while they had the \$14,000 available in the Community Health & Welfare Program Account which could be transferred into the Van Driver Account for next year (fy 2/24). However, he stated by moving the \$14,000 from Community Health & Welfare Program Account that they would lose the Senior Program Revenues. He stated if they applied and received the Senior Resources Agency on Aging -Title 3 Grant Funding that it would allow the town to ease into fully funding the full-time van driver over a 3 to 4-year period.

Chairman Dombrowski noted as mentioned during the Public Hearing earlier this evening regarding proposed Amendments to Ordinance #100-016 (rev 1) “*An Ordinance Combining Parks And Recreation Commission and Senior Citizens Commission for the Town of Ledyard*” that the merger of the two Commissions was independent of the operational costs.

Chairman Dombrowski continued by addressing the funding to increase one part-time Van Driver to full-time. He stated based on Mr. Johnson’s description that it sounded like they were doing shell game where they were moving \$14,000 from one account to another account to pay for a full-time van driver. However, he stated because they were artificially filling what they were taking out of the budget with grant funding to pay for the additional full-time hours; that the following year the town would have to pay the entire cost for the full-time van driver. He stated that he did like paying for salaries with grant funding because the next year the town would be responsible to pay the full cost of the salary. He stated although it would look better this year, that the long-term the town would have to pay for the entire salary the following year.

Councilor Saums stated that they had the following options:

- Apply for the Senior Resources Agency on Aging -Title 3 this year;
- Apply for the Senior Resources Agency on Aging -Title 3 for the following two years with a decrease in grant funding;
- If the town does not receive the grant funding for the following years they could reduce the one full-time Van Driver back to part-time.

Chairman Dombrowski stated he intended to vote “No” on this Senior Resources Agency on Aging -Title 3 Grant Application to support the additional hours to increase one Van Driver from part-time to full-time for the follow reasons:

- Funding was already available in the budget to pay to increase one of the Van Drivers to full-time.
- A full-time Van Driver was needed.
- The budget would remain consistent in the following years to keep the full-time Van Driver.
- The revenues received from Senior Citizens Health and Welfare Program would be going into the Parks & Recreation Special Revenue Fund and not into the General Fund.

Mr. Johnson stated because the \$14,000 was already in the budget (fy 23/24) to increase one Van Driver to full-time that he was now leaning toward not applying for the grant. He stated if they cut the \$14,000 out of the budget and fill it with the grant funding, as Chairman Dombrowski stated, that the following year’s budget (fy 24/25) would need to be increased to cover the cost. He also explained in continuing to review the Application and subsequent reporting requirements for Senior Resources Agency on Aging -Title 3 Grant Program that he was not sure if receiving this grant funding would be worth time and resources needed to comply with the month reporting.

VOTE: 0 - 7 Motion Failed

Chairman Dombrowski referred the funding to increase one Van Driver to full-time back to the Finance Committee.

Councilor Saums thanked Mr. Johnson for all the work he put into this proposal

Action : Failed

Finance Committee Meeting 04/5/2023:

File #: [23-1439](#) Version: 1

Type: Financial Business Request (FBR)

Title: MOTION to authorize the Mayor to submit a Grant Application to Senior Resources Agency on Aging -Title 3 in the amount of \$14,120 to be used to increase one Van Driver to full-time; with a local match \$8,000 to come from Account# 10130501-51800 (Part-time Wages).

Moved: Ingalls

Seconded: Saums

Action: Recommend to Approve

Minute Note:

Moved by Councilor Ingalls, seconded by Councilor Saums

Discussion: Senior Citizens Director Scott Johnson Jr., explained that the Senior Citizens Center has seen an increase in the demand for transportation services. He stated making one of the Van Drivers full-time would allow the Senior Citizens Center to increase their service hours and accommodate more medical rides. He stated should the merger of the Senior Citizens Commission and the Parks & Recreation Commission move forward, that they had initially proposed moving the funds from the Community Health & Welfare Programs Account into the Van Driver line to cover the cost for the increased full-time hours. However, he stated if the town received the Senior Resources Agency on Aging -Title 3 Grant funding that they would be able increase the Van Driver's hours to full-time without having to use the Community Health & Welfare funds.

Mr. Johnson went on to explain that \$8,000 has been included in the upcoming Fiscal Year 2023/2024 Budget for the Van Driver, which they could use for the town's local match to receive the grant funding. He stated the town would be eligible to apply/receive the Senior Resources Agency on Aging -Title 3 Grant for three consecutive years with the percentage of the funding slightly decreasing each year (85%; 80%; 75%).

Councilor Saums questioned once the town has completed the three-year grant cycle whether they would be eligible to reapply for the grant program. Mr. Johnson explained that the Senior Resources Agency on Aging -Title 3 Grant was for *new* programs.

Councilor Saums questioned whether the Senior Citizens Center received any revenues for providing transportation for medical appointments, or whether it was strictly a service that they provided to the Senior Citizens. Mr. Johnson stated because the Van was purchased using Grant Funding that they were not allowed to charge for providing transportation to medical appointments. However, he stated they do accept donations for the rides; noting that some riders will give a dollar for the ride.

Councilor Ingalls stated using grant funding for wages was always tricky, noting that once the grant funding has been exhausted the cost then becomes the town's cost. Therefore, she questioned the funding plan for the full-time Van Driver once the Senior Resources Agency on Aging -Title 3 Grant has ended. Mr. Johnson stated once the Senior Resources Agency on Aging -Title 3 Grant ended that the Senior Citizens Center would like to continue the full-time Van Driver. Therefore, he stated they would add the wages for the full-time position into the annual budget.

Mr. Johnson went on to explain because they were uncertain of the outcome of the proposal to combine the Senior Citizens Commission with the Parks & Recreation Commission that for next fiscal year (23/24) he has submitted two separate budget and he explained the following:

- Senior Citizens programs were subsidized by taxpayers' dollars (a few years ago the budget was reduced from \$14,000 to \$10,000 per year); and the fees for the Programs were not breaking even. The cost of the Senior Citizens Health and Welfare Programs cost about \$14,000 per year; therefore, the Senior Citizens Center budget included \$14,000 for Senior Center Health and Welfare Programs.
- Parks & Recreation's programs were self-sufficient, with 80% of the program fees going to the instructor and 20% going to the Parks & Recreation Special Revenue Fund. The 20% of the Parks & Recreation program fees had been being used to pay for their independent quarterly magazine that advertised their Programs.

Mr. Johnson went on to explain because the quarterly Events Magazine was now being paid for by the advertisements, that he proposed using the 20% collected from the Parks & Recreation programs, that was previously being used to independently advertise the Parks & Recreation Programs, to off-set the cost of the Senior Citizens programs that were currently not breaking even. He stated by using 20% collected from the Parks & Recreation programs for the Senior Citizens programs that the \$14,000 of taxpayer dollars that were being budgeted to support the Senior Citizens Health and Welfare Programs could be then used to pay for the full-time Van Driver for the Senior Center.

Councilor Saums provided an overview noting that the revenue received from the Parks & Recreation Programs could be used to support the Senior Citizens Health and Welfare Programs. The funding that was being budgeted to off-set the cost Senior Citizens Health and Welfare Programs would then be used to pay for the full-time Van Driver for the Senior Citizens.

VOTE: 2 - 0 Approved and so declared

Action: Recommend to Approve

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

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 Senior Center - Scott Johnson, Jr. Date 3/29/2023

Dept/Commission/Board Senior Commission

Name of Grant Title III Funding Older Americans Act

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

Federal passed through designated Area Agency on Aging (Senior Resources)

Reason for Applying for this Grant

This will allow us to make a driver full time and potentially spread the financial impact to the town for up to 3 years.

Amount of Town Match \$8,000.00

Source of Town Match GF 10130501, Part Time Wages 51800

In-Kind Match - Explain

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

Scott Johnson Jr

Printed Name

3/29/23

Date

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.