

Montgomery County Board of Commissioners

Ordinance 2023-12

Adopting a Federal Funds Purchasing Policy

Whereas, the Montgomery County Government from time to time accepts funding from the Federal Government; and

Whereas, in order to accept funding from the Federal Government, the County must adopt a purchasing policy regarding the procurement of goods, materials and services in accordance with Title 2, Part 200 of the Code of Federal Regulations; and

Whereas, the Board of Commissioners desires to adopt a purchasing and procurement policy in accordance with the Code of Federal Regulations to govern the County's procurement of goods, materials and services; and

Whereas, the Board finds that is in the best interest of the County to add a new section to the County Code to establish a purchasing policy to comply with Federal regulations and to promote economic efficiency and continuity in purchasing; and

It is further ordained that a new section of the Montgomery County Code, Section 36.40, is hereby added and this new section shall read as follows:

"§ 36.40 Federal Funds Purchasing Policy

For purchasing involving Federal funds or Federal oversight, the following procedure shall be followed:

- (A) **Records.** The County shall maintain records sufficient to detail the history of procurement. These records shall include, but are not limited to, the following:
- a. Rationale for method of procurement;
 - b. Selection of contract type;
 - c. Contractor selection or rejection; and
 - d. The basis for the contract price.

- (B) **Informal procurement methods.** When the value of the procurement for property or services under a federal award does not exceed the simplified acquisition threshold (SAT), as defined by 2 CFR 200.1, formal procurement methods are not

required. The County may use informal procurement methods to expediate the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

a. **Micro-purchases**

- i. **Distribution.** When acquiring supplies or services for an aggregate dollar amount of which does not exceed the micro-purchase threshold established by Federal law, if practicable, the County should distribute micro-purchases equitably among qualified suppliers.
- ii. **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive prices or rate quotations if the County considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly.
- iii. **Micro-purchase thresholds.** The County adopts the Federally-determined threshold for micro purchases, reserving the right to increase the threshold based on an evaluation of risk.
- iv. **Higher Local Threshold.** If the County decides on a threshold above the Federal standard, the County must include any of the following:
 1. A qualification as a low-risk auditee, in accordance with the Federally-set criteria for the most recent audit;
 2. An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 3. For public institutions, a higher threshold consistent with state law.
- v. **Indirect Costs.** If the County increases the micro-purchase threshold over \$50,000, it must be approved by the cognizant agency for indirect costs. The County must submit a request as required by 2 CFR 200.320(a)(1)(iv). The increased threshold is valid until there is a change in status in which the justification was approved.

b. **Small purchases**

- i. **Small purchase procedures.** Small purchase procedures are to be used when the aggregate dollar of acquiring property or services is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. Price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the Board of Commissioners.
- ii. **Simplified acquisition thresholds.** The County adopts the Federal simplified acquisition threshold.

c. **Formal procurement methods.** When the value of the procurement for property or services under a federal financial assistance award exceeds the

simplified acquisition threshold, formal procurement methods are required. Formal procurement methods require public advertising unless a non-competitive procurement can be used in accordance with Federal law. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold:

- i. **Sealed bids.** Bids shall be 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.
- ii. **Sealed bids applicability.** In order for sealed bidding to be feasible, the following conditions should be present:
 1. A complete, adequate, and realistic specification or purchase description;
 2. Two or more responsible bidders are willing and able to compete effectively for the business; and
 3. A firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- iii. If sealed bids are used, the following requirements apply:
 1. Bids must be solicited from an adequate number of qualified sources, 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;
 2. 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;
 3. All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;
 4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in the 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
 5. Any and all bids may be rejected if there is a sound documented reason.
- iv. **Proposals:** Proposals are a procurement method in which either a fixed price or cost-reimbursement type is awarded. Proposals are generally used when conditions are not appropriate for the use of

sealed bids. They are awarded in accordance with the following requirements:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 2. The County will have a written method for conducting technical evaluations of the proposals received and making selections;
 3. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the County, with price and other factors considered; and
 4. The County may use competitive proposal procedures for qualifications-based procurement of architectural/engineering professional services to evaluate offeror's qualifications and select the most qualified offeror, 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 architectural/engineering professional services. It cannot be used to purchase other types of services through architectural/engineering firms that are a potential source to perform the proposed effort.
- v. **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
 2. The item is available only from a single source;
 3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 4. The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the County; or
 5. After solicitation of a number of sources, competition is determined inadequate.
- d. The County shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where

applicable Federal statutes expressly mandate or encourage geographic preference.

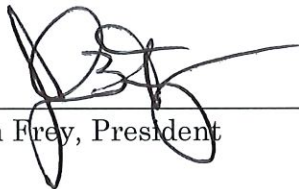
- e. When contracting for architectural and engineering services, geographic location may be a selection criterion provide its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the project.”

It is further ordained that this ordinance shall become effective upon adoption.


It is further ordained that all other provisions of the Code of Ordinances which are not specifically amended by this ordinance shall remain in full force and effect.

Ordained this 14th day of August, 2023.

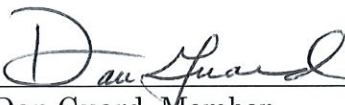
Montgomery County Board of Commissioners:



John Frey, President




James D. Fulwider, Vice President



Dan Guard, Member

Attest:



Mindy Byers, Auditor