

REGULAR MEETING AGENDA

City of Black Hawk City Council
211 Church Street, Black Hawk, CO

February 22, 2017
3:00 p.m.



Tour of Robert A. Clark Emergency Operations Center
911 Miners Mesa Road
1:30 p.m.

RINGING OF THE BELL:

1. CALL TO ORDER
2. ROLL CALL & PLEDGE OF ALLEGIANCE:
3. ADENDA CHANGES:
4. CONFLICTS OF INTEREST: (Council disclosures are on file w/City Clerk & Sec. of State)
5. PUBLIC COMMENT: *Please limit comments to 5 minutes*
6. APPROVAL OF MINUTES: February 8, 2017 Regular Meeting
7. PUBLIC HEARINGS:
None
8. ACTION ITEMS:
A. Resolution 17-2017, A Resolution Approving the City of Black Hawk Purchasing Policy
9. CITY MANAGER REPORTS: Golden Sneaker Award Presentation
10. CITY ATTORNEY:
11. EXECUTIVE SESSION:
12. ADJOURNMENT:

MISSION STATEMENT

The mission of the City of Black Hawk is to progressively provide cost effective programs and services of the highest quality to the community.



**City of Black Hawk
City Council**

February 8, 2017

MEETING MINUTES

Police Chief Cole rang the bell.

1. **CALL TO ORDER:** The regular meeting of the City Council was called to order on Wednesday, February 8, 2017, at 3:00 p.m. by Mayor Spellman.

2. **ROLL CALL:** Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Staff present: City Attorney Hoffmann, City Manager Lewis, Police Chief Cole, Fire Chief Taylor, City Clerk/Administrative Services Director Greiner, Finance Director Hillis, Public Works Director Isbester, Community Planning and Development Administrator Linker, and Deputy City Clerk Martin.

PLEDGE OF ALLEGIANCE: Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.

The Mayor asked for a moment of silent tribute out of respect for the passing of Black Hawk's oldest resident, who made his home here for the last 62 years, his father, Bill Spellman.

3. **AGENDA CHANGES:** Deputy City Clerk Martin confirmed there were no agenda changes.

4. **CONFLICTS OF INTEREST:** City Attorney Hoffmann asked Council to declare any Conflicts of Interest on any issue appearing on the agenda this afternoon other than those previous disclosures and conflicts that have already been disclosed and are on file with the City Clerk and Secretary of State. There were no conflicts noted from City Council.

City Attorney Hoffmann asked the audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. The audience had no objections.

5. PUBLIC COMMENTS: Deputy City Clerk Martin confirmed that no one had signed up to speak.

6. APPROVAL OF MINUTES: January 11, 2017.

MOTION TO APPROVE Alderman Armbright **MOVED** and was **SECONDED** by Alderman Torres to approve the Minutes as presented.

MOTION PASSED There was no discussion and the motion passed unanimously.

7. PUBLIC HEARINGS:

A. CB2-2017, An Ordinance of the City Council of the City of Black Hawk Colorado Approving a Franchise Agreement with Public Service Company of Colorado, dba Xcel Energy, Granting to Xcel Energy the Non-Exclusive Right to Make Reasonable Use of City Streets, Public Utility Easements and Other City Property to Provide Gas and Electric Utility Service to the City and Its Residents; to Sell, Store, Purchase, Exchange, Transmit, Transport, and Distribute Gas and Electric Utility Services Within and Through the City all in Accordance with the Terms and Conditions of the Franchise Agreement; Specifying that the Franchise Shall Be Effective Upon the Effective Date of this Ordinance and for a Term of Twenty (20) Years Thereafter; Setting a Franchise Fee of 3% of the Gross Revenues of Xcel Energy as Defined in Said Franchise; Providing for a Surcharge Therefore; Authorizing the Mayor to Execute the Franchise Agreement for and on Behalf of the City and the City Clerk to Attest Thereto; and, Setting Forth Other Details Related Thereto

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann reminded Council that this was the required Public Hearing and second reading, as per State law. The first reading was at their January 11 meeting.

Preston Gibson, Xcel Energy Area Manager from Arvada, stated his name and address for the record. He thanked staff for all of their efforts on this project and gave appreciation to Council for their consideration of approval.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB2, An Ordinance of the City Council of the City of Black Hawk Colorado Approving a Franchise Agreement with Public Service Company of Colorado, dba Xcel Energy, Granting to Xcel Energy the Non-Exclusive Right to Make Reasonable Use of City Streets, Public Utility Easements and Other City Property to Provide Gas and Electric Utility Service to the City and Its Residents; to Sell, Store, Purchase, Exchange, Transmit, Transport, and Distribute Gas and Electric Utility Services Within and Through the City all in Accordance with the Terms and Conditions of

the Franchise Agreement; Specifying that the Franchise Shall Be Effective Upon the Effective Date of this Ordinance and for a Term of Twenty (20) Years Thereafter; Setting a Franchise Fee of 3% of the Gross Revenues of Xcel Energy as Defined in Said Franchise; Providing for a Surcharge Therefore; Authorizing the Mayor to Execute the Franchise Agreement for and on Behalf of the City and the City Clerk to Attest Thereto; and, Setting Forth Other Details Related Thereto open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE

Alderman Moates **MOVED** and was **SECONDED** by Alderman Johnson to Approve CB2, An Ordinance of the City Council of the City of Black Hawk Colorado Approving a Franchise Agreement with Public Service Company of Colorado, dba Xcel Energy, Granting to Xcel Energy the Non-Exclusive Right to Make Reasonable Use of City Streets, Public Utility Easements and Other City Property to Provide Gas and Electric Utility Service to the City and Its Residents; to Sell, Store, Purchase, Exchange, Transmit, Transport, and Distribute Gas and Electric Utility Services Within and Through the City all in Accordance with the Terms and Conditions of the Franchise Agreement; Specifying that the Franchise Shall Be Effective Upon the Effective Date of this Ordinance and for a Term of Twenty (20) Years Thereafter; Setting a Franchise Fee of 3% of the Gross Revenues of Xcel Energy as Defined in Said Franchise; Providing for a Surcharge Therefore; Authorizing the Mayor to Execute the Franchise Agreement for and on Behalf of the City and the City Clerk to Attest Thereto; and, Setting Forth Other Details Related Thereto.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

B. CB3-2017, An Ordinance Amending Chapter 10 of the Black Hawk Municipal Code to Prohibit Certain Activities Within the History Appreciation Recreation Destination (HARD) District and to Create Penalties for the Violation Thereof

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann introduced this item. He said this would be a new Section under Chapter 10 to address certain prohibitions, specifically within the City’s open space area, some of which already fall under other Sections of the Code.

Alderman Midcap acknowledged resident Dawn Blake’s letter to Council and discussion ensued regarding dogs on leashes vs. voice command. City Attorney Hoffmann confirmed that the existing Dog

Code calls out for dogs to be on leashes now. Alderman Bennett noted that this ordinance was not really changing anything; it was really just allowing signage to be put up.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB3, An Ordinance Amending Chapter 10 of the Black Hawk Municipal Code to Prohibit Certain Activities Within the History Appreciation Recreation Destination (HARD) District and to Create Penalties for the Violation Thereof open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Johnson to Approve CB3, An Ordinance Amending Chapter 10 of the Black Hawk Municipal Code to Prohibit Certain Activities Within the History Appreciation Recreation Destination (HARD) District and to Create Penalties for the Violation Thereof.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

8. ACTION ITEMS:

A. Resolution 10-2017, A Resolution Approving the City of Black Hawk Fee Schedule, As Amended

Mayor Spellman read the title.

Community Planning and Development Administrator Linker introduced this item and said this was just a housekeeping item to match what the State of Colorado has recently adopted as their new electrical fees.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 10-2017, A Resolution Approving the City of Black Hawk Fee Schedule, As Amended.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

B. Resolution 11-2017, A Resolution Approving a Professional Service Agreement with SAFEbuilt Colorado LLC

Mayor Spellman read the title.

Community Planning and Development Administrator Linker said this agreement was in excess of \$35,000 requiring Council approval. SAFEbuilt will be providing Plan Review and Building Inspection services, as well as providing a Chief Building Official for the City, and that the excess amount is due to the Monarch Casino.

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 11-2017, A Resolution Approving a Professional Service Agreement with SAFEbuilt Colorado LLC.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

C. Resolution 12-2017, A Resolution Approving the Fireworks Production Contract Between the City of Black Hawk and Western Enterprises, Inc.

Mayor Spellman read the title.

City Manager Lewis introduced the annual fireworks contract and said there was no change in costs from last year. He said there would be a bit of a surprise in store for everyone in three years when the Monarch Tower is finished.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 12-2017, A Resolution Approving the Fireworks Production Contract Between the City of Black Hawk and Western Enterprises, Inc.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

D. Resolution 13-2017, A Resolution Approving the Reclassification of the Position of Executive Administrative Assistant to Administrative Assistant

Mayor Spellman read the title.

City Clerk/Administrative Services Director Greiner introduced this item. She said the Administrative Services Department has analyzed what they actually need after having this position for two years and they feel that this reclassification would better serve the Department.

MOTION TO APPROVE

Alderman Armbricht **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 13-2017, A Resolution Approving the Reclassification of the Position of Executive Administrative Assistant to Administrative Assistant.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

E. Resolution 14-2017, A Resolution Approving the Purchase of a 2017 Chevrolet One-Ton Vehicle with Utility Box and Plow

Mayor Spellman read the title.

Public Works Director Isbester said that this request is on behalf of the Water Department to replace their 1999 utility truck, which was authorized in the 2017 Budget this year, and to dispose of the old one through trade-in.

MOTION TO APPROVE

Alderman Midcap **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 14-2017, A Resolution Approving the Purchase of a 2017 Chevrolet One-Ton Vehicle with Utility Box and Plow.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

F. Resolution 15-2017, A Resolution Approving a Purchase and Sale Agreement Between the City of Black Hawk and John C. Woolum and Dorothy S. Woolum

Mayor Spellman read the title.

Public Works Director Isbester introduced this item. He said this was one of the mining claims along the tramway on Maryland Mountain. He said the owners have agreed to sign and he is just awaiting the signatures back.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 15-2017, A Resolution Approving a Purchase and Sale Agreement Between the City of Black Hawk and John C. Woolum and Dorothy S. Woolum.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

G. Resolution 16-2017, A Resolution Approving an Easement Agreement on the Smith 502 Lode Parcel

Mayor Spellman read the title.

Public Works Director Isbester said this was for another parcel on Maryland Mountain and is an easement for trails through there. He said they are very close to finalizing the agreement. City Attorney

Hoffmann suggested adding to the motion “subject to City Attorney approval”.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 16-2017, A Resolution Approving an Easement Agreement on the Smith 502 Lode Parcel, subject to City Attorney approval.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

9. CITY MANAGER REPORTS:

City Manager Lewis had nothing to report.

10. CITY ATTORNEY:

City Attorney Hoffmann provided an update on the property acquisition on Maryland Mountain. He said there were a total of eleven properties to be acquired: three appear to have some questions on ownership and may have to be acquired through eminent domain because the titles are not clear, two of the properties are getting appraisals pursuant to the property owners rights by State law, and one, known as the Surprise Lode, is going through the eminent domain process. He said everything else is done and he expects all to be finalized by the end of the year.

Mayor Spellman noted that the Monarch held their ground breaking ceremony this morning and all went well. He said he anticipates seeing construction progress at the site shortly.

11. EXECUTIVE SESSION: None

12. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council closed at 3:25 p.m.

Melissa A. Greiner
City Clerk

David D. Spellman
Mayor

RESOLUTION 17-2017
A RESOLUTION
APPROVING THE CITY OF
BLACK HAWK
PURCHASING POLICY

**STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK**

Resolution No. 17-2017

**TITLE: A RESOLUTION APPROVING THE CITY OF BLACK HAWK
PURCHASING POLICY**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, COLORADO, THAT:

Section 1. The City of Black Hawk Purchasing Policy (the “Purchasing Policy”), attached hereto as **Exhibit A**, is hereby approved.

Section 2. In accordance with the provisions of the Charter and the Municipal Code providing that the City Manager is the chief administrative officer of the City, the City Council hereby delegates to the City Manager as part of the adoption of the Purchasing Policy the authority to execute contracts and otherwise authorize expenditures that have been previously budgeted in an amount not to exceed Fifty Thousand Dollars (\$50,000.00). All purchases or other contracts in excess of Fifty Thousand Dollars (\$50,000.00) shall be made only with the approval of the City Council.

Section 3. Resolution No. 4-2007 is hereby repealed.

RESOLVED AND PASSED this 22nd day of February, 2017.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Purchasing Policy.

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE: Resolution 17- 2017, A Resolution Approving the Black Hawk Purchasing Policy.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: The attached Purchasing Policy provides guidance for every purchase to which the City is a party. The Policy specifically identifies a dollar threshold requiring informal (\$10,000-\$50,000) or formal (greater than \$50,000) competitive bidding. Additionally, the Policy establishes dollar thresholds for purchase agreements, with Department Directors able to approve agreements not to exceed \$25,000, the City Manager agreements not to exceed \$50,000 and Council approval for all agreements in excess of \$50,000.

AGENDA DATE: February 22, 2017

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: Yes No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: Resolution, Purchasing Policy

RECORD: Yes No

CITY ATTORNEY REVIEW: Yes N/A

SUBMITTED BY:

REVIEWED BY:

Lance Hillis

Jack D Lewis

Lance Hillis, Finance Director

Jack D. Lewis, City Manager

CITY OF BLACK HAWK PURCHASING POLICY

- 1: APPLICATION AND DEFINITIONS**
- 2: GENERAL REQUIREMENTS & THRESHOLDS**
- 3: PRINCIPLES AND ETHICS**
- 4: FORMAL BIDDING REQUIRED**
- 5: FORMAL BIDDING PROCEDURES AND SELECTION CRITERIA**
- 6: COMPARATIVE PRICE QUOTATIONS**
- 7: AMENDMENTS TO PURCHASE AGREEMENTS**
- 8: PROCURMENT REQUIREMENTS WHEN SPENDING FEDERAL FUNDS**
- 9. RULES AND ADMINISTRATIVE PROCEDURES**
- EXHIBIT A: Code of Federal Regulations 200.318 – 200.326**
- EXHIBIT B: Appendix II to C.F.R Part 200**

1: APPLICATION AND DEFINITIONS:

(A) This Policy shall apply to every purchase to which the City is a party, with special guidance for purchases expending Federal Funds.

(B) The following words, terms and phrases, when used in this Policy, shall have the following meanings, unless the context clearly indicates otherwise:

“Authorized expenditure” shall mean the amount of spending approved by City Council action for a specific purchase agreement, including any authorized contingency amount, which may differ from the budgeted amount and from the purchase agreement amount. For amounts that do not exceed fifty thousand dollars (\$50,000), “authorized expenditure” means the amount of spending approved by the City Manager, including any authorized contingency amount, which may differ from the budgeted amount and from the purchase agreement amount.

“Bids” shall mean either bids or proposals submitted in response to a written invitation for bids or a written request for proposals.

“City Manager” shall mean the City Manager and the City Manager’s designee.

"Professional services" shall mean architectural, engineering, legal, accounting & auditing, consulting or other services that involve primarily the furnishing of skilled labor, time or expertise.

“Purchase agreement” shall mean contracts or invoices for the purchase of construction, professional services, other services and supplies, or for the purchase of real estate.

“Quotes” shall mean an informal solicitation process for fulfilling a need for a specific product or service.

2: GENERAL REQUIREMENTS & THRESHOLDS:

(A) Every purchase agreement shall be evidenced by a written document.

(B) A purchase agreement for materials, equipment, supplies or services to be provided on an ongoing basis shall contain a maximum amount payable under the agreement or a termination date for the agreement.

(C) **Purchases Under \$10,000.** Small items in this category, used on a day-to-day basis, may be purchased without competitive bidding on each item. However, even on these items, periodic telephone/online checks should be made to be certain the purchases are obtained at the lowest cost for the quality desired.

- (D) **Purchases of \$ 10,000 - \$50,000.** Purchases or contracts for services for the sum of \$10,000 to \$50,000 shall be secured on a competitive bid basis. This must be accomplished by soliciting at least three written informal quotes. When seeking written informal quotes, all quotes must be tabulated in detail and attached to the winning contract/invoice for future reference. If the recommended quote is not the lowest, a detailed explanation must also accompany the contract/invoice. Bids for professional services are exempt from this requirement. If less than three quotes are obtained, City Manager approval required.
- (E) **Purchases Greater than \$50,000:** Any item for services, projects, or equipment in this category shall be purchased through the formal bid process. Formal bids shall be secured by advertisement. The responsibility for the advertising of formal bids will be that of the Department Head overseeing the purchase. Bids for professional services are exempt from this requirement. It is required that an advertisement for formal bid be solicited for at least 10 days prior to the bid opening.
- (F) A purchase agreement in an amount of twenty-five thousand dollars (\$25,000) or less per fiscal year and appropriated in the current Budget, may be approved by a **Department Director** without City Manager or Council action.
- (G) A purchase agreement in an amount that does not exceed the City Manager's purchasing authority, hereby set at fifty thousand dollars (\$50,000) or less per fiscal year and appropriated in the current Budget, may be approved by the City Manager without separate Council action.
- (H) Every purchase agreement in an amount that exceeds fifty thousand dollars (\$50,000) in one (1) fiscal year, regardless of form, shall be presented to City Council so that Council may approve the authorized expenditure. However, the purchase of utilities or employee service need not be approved by express action, but shall be considered an authorized expenditure if the budget appropriation has been approved.
- (I) **CITY ATTORNEY REVIEW:** Every purchase agreement that does not use the standardized City contracts shall be approved as to legal form by the City Attorney before it is executed. This subsection shall not apply to an individual agreement of employment with an employee of the City.

3: PRINCIPLES AND ETHICS:

Every officer and employee of the City is expressly prohibited from knowingly:

- (A) Seeking or accepting any personal gift or money directly or indirectly, from any person, company, firm or corporation in connection with a purchase agreement; that is prohibited per resolution No. 16-2006 and C.R.S. 24-18-104.
- (B) Underestimating or exaggerating requirements to a prospective bidder for the purpose of influencing bids;
- (C) Misrepresenting the quality of a bidder's products or services;
- (D) Influencing the City to enter into a purchase agreement that will benefit the officer or employee, either directly or indirectly.
- (E) Approving a purchase in which any employee, elected or appointed officer of the City has an interest, without the approval of the City Manager or City Council.
- (F) No single purchase transaction shall be subdivided for the purpose of circumventing the dollar value limitations of this Policy.

4: FORMAL BIDDING REQUIRED:

(A) Formal bidding procedures shall be followed when the amount of a purchase agreement exceeds fifty thousand dollars (\$50,000), unless:

(1) City Council determines by unanimous resolution of those present at the meeting that the public interest will be best served by joint purchase with or from another unit of government, including State and Federal bid awards; or

(2) City Council determines, upon recommendation of the City Manager, that the public interest will be best served by negotiated contract with a single vendor or contractor.

(B) The expenditure is the purchase of utilities, employee services, the expenditure is part of an intergovernmental agreement, purchase or lease of real property, acquisition of water rights or the expenditure is for items for which there is no competitive alternative.

(C) In case of a declared or pronounced emergency affecting the public peace, health or safety, City Council may waive all requirements for formal bidding. In such cases, the City Manager may direct the appropriate department head to procure emergency needs by informal, open-market procedures, at no more than current market prices, as expeditiously as possible. The City Manager shall present a full report of the circumstances necessitating the emergency action at the next City Council meeting with the potential option to extend the waiver of requirements for formal bidding.

5: FORMAL BIDDING PROCEDURES AND SELECTION CRITERIA:

(A) When formal bidding is required pursuant to Section 4, at least ten (10) days prior to the deadline for receipt of bids, a request or invitation for sealed bids shall be published at least once in an area newspaper selected for maximum impact on prospective bidders, and/or shall be sent to three (3) or more potential bidders, and/or shall be posted via electronic solicitation.

(B) Sealed bids shall be opened in public at the time and place stated in the public notice, unless all bidders have been notified of a change in such time or place by written addendum. A tabulation of all bids received shall be available for public inspection.

(C) After the bids have been reviewed, if the purchase will exceed the City Manager's purchasing authority of fifty thousand dollars (\$50,000), the City Manager shall submit a report to City Council that contains an analysis of the bids, a recommendation for an award, and the reasons for the recommendation. The purchase agreement shall be awarded to the lowest responsible bidder meeting the bid specifications, unless City Council determines that, after reviewing the City Manager's report, the public interest would be better served by accepting another bid. If the purchase will not exceed the City Manager's purchasing authority, the City Manager shall make the required analysis and decision.

(D) In determining whether the public interest would be better served by accepting a bid other than the lowest bid, the following factors shall be considered:

(1) The bidder's skill, ability, and capacity to perform the services or to furnish the materials, equipment or supplies required;

(2) Whether the bidder can perform the services or furnish the materials, equipment or supplies promptly, or within the time period specified, without delay or interference;

(3) The bidder's character, integrity, reputation, judgment, experience and efficiency;

(4) The quality of the bidder's performance of previous purchase agreements;

(5) The bidder's previous and current compliance with statutes, ordinances and rules relating to the purchase;

(6) The sufficiency of the bidder's financial resources necessary for the performance of the purchase agreement;

(7) The bidder's ability to provide future maintenance or service; and

(8) The number and nature of any conditions attached to the bid.

(E) If the purchase will exceed the City Manager's purchasing authority, upon recommendation of the City Manager, the City Council may reject all bids when it determines that such action is in the public interest. If the purchase will not exceed the City Manager's purchasing authority, the City Manager may reject all bids upon making the same determination.

6: COMPARATIVE PRICE QUOTATIONS:

(A) When the amount of a purchase agreement does not exceed fifty thousand dollars (\$50,000), comparative price quotes given by telephone, in person, or in writing from at least three (3) vendors or contractors will be required, unless:

(1) The City Manager determines that the public interest would be best served by negotiated contract with a single vendor or contractor or by joint purchase with or from another unit of government; or

(2) The City Manager determines that the public interest would be best served by obtaining the goods or services through the formal bidding process.

(B) Comparative price quotes must be obtained every three (3) years, except with permission from the City Manager.

7: AMENDMENTS TO PURCHASE AGREEMENTS:

(A) The City Manager shall have authority to approve an amendment to a purchase agreement when the change order does not exceed 10% of the original agreement and combined with the original agreement does not exceed the approved appropriation for said purchase.

(B) All other amendments to a purchase agreement previously approved by City Council shall be approved or ratified by City Council.

8: PROCUREMENT REQUIREMENTS WHEN SPENDING FEDERAL FUNDS:

(A) All purchases paid for or reimbursed with Federal Grant Funds, require compliance with the Federal Office of Management and Budget (OMB) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. All non-Federal entities (including the City of Black Hawk) will follow The Code of Federal Regulations (CFR) Title 2, Subtitle A, Chapter II, Part 200.318 through 200.326 (Exhibit A).

(B) Purchases paid for with federal funds must be separated into one of several methods based on dollar value and the nature of the goods or services sought. Different levels of formality and detail are required for each:

(1) **Micro-purchases** (currently \$3,000 or under) – no soliciting bids or quotes required; distribute purchases equitably among qualified suppliers; City need only find the price to be reasonable. C.F.R. § 200.320(a).

(2) **Small purchases** (currently more than \$3,000 but not exceeding \$150,000) – price or rate quotations must be obtained from an adequate number of qualified sources. C.F.R. § 200.320(b).

(3) **Procurement by sealed bids** (currently purchases over \$150,000) – formal advertising, public solicitation and bidding required. City must award to the responsible bidder with the lowest bid conforming to all material terms and conditions in the invitation for bids. C.F.R. § 200.320(c).

1. Under the formal bidding process, sealed bids are preferred, two or more responsible bidders should compete, and the purchase should be of the type that lends itself to a firm fixed price contract where the bids are primarily evaluated on the basis of price. C.F.R. § 200.320(c)(1).
2. The bids must be opened publicly and any or all bids may be rejected with a sound and documented reason. C.F.R. § 200.320(c)(2).

(4) **Procurement by competitive proposals** (when conditions are not appropriate for sealed bids, such as for professional architect or engineer services; currently applies to purchases over \$150,000) – requests for proposals must be publicized and solicited from an adequate number of qualified sources. C.F.R. § 200.320(d).

1. The City must have a written method for conducting technical evaluations, and the award should be made to the responsible firm whose proposal is most advantageous to the program; with price and other factors considered. C.F.R. § 200.320(d)(4).

(5) **Procurement by non-competitive proposals** - only permitted when items are available from a single source, there is public exigency or emergency, the federal awarding agency (or pass-through entity) expressly authorizes non-competitive proposals, or solicitation fails to produce adequate competition. C.F.R. § 200.320(f).

(C) When using federal dollars and following the methods of purchases discussed above, the City is required to also take "affirmative steps" to assure that minority-owned and women-owned are included in the purchasing and soliciting process. C.F.R. § 200.321.

(D) Finally, the Super Circular specifies which provisions of federal law the City must include within its own form of contract. C.F.R. § 200.326. Appendix II to Part 200, C.F.R. is attached as Exhibit B.

9: RULES AND ADMINISTRATIVE PROCEDURES:

(A) The City Manager is authorized to promulgate rules and administrative procedures to implement the provisions of this Policy.

EXHIBIT A

Code of Federal Regulations 200.318 – 200.326

§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.

§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.

§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.

§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.

§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.

EXHIBIT B

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

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

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a

contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.