COUNTY AGENDA REQUEST

Department:	Purchasing	Presenter(s):	Ted Burgess
Meeting Date:	Thursday, March 22, 2012	Type of Request:	Consent

Wording for the Agenda:

Approval of staff's recommendation to adopt policies and procedures for purchases that use federal grant funds.

Background/History/Details:

When the county accepts federal grant funds, it must abide by all federal laws, rules, and regulations that pertain to the grant. Federal agencies have jointly issued requirements called the "grants management common rule." The rule contains, among other things, stipulations for procurements using grant funds. The rule covers such areas as economical use of the funds, maintenance of records, full and open competition, and other procurement issues. The rule also requires a written policy whereby vendors can protest the outcome of invitations to bid or requests for proposals.

The two attached draft policies are recommended to address the requirements included in the grants management common rule.

What action are you seeking from the Board of Commissioners?

Approval of staff's recommendation to adopt policies and procedures for purchases that use federal grant funds.

If this item requires funding, please describe:

No funding is required. Approval of this action will allow the county to accept federal grants.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Yes	Reviewed by Legal	Yes
Approved by Purchasing	Yes	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

Fayette County GEORGIA

Where Quality Is A Lifestyle

To: Jack Krakeel

From: Ted L. Burgess

Date: March 7, 2012

Subject: Purchasing Procedures for Federal Compliance

When the county accepts a federal grant, it must agree to abide by all federal rules and regulations associated with the grant.

Federal agencies that make grants to state and local governments were directed to adopt government-wide terms and conditions for use of the grants. This led to issuance of the "grants management common rule." The purpose of the rule was to establish consistency and uniformity among federal agencies in the management of grants.

Among other things, the common rule requires the county to adopt procedures governing specific aspects of the procurement process. Two of the requirements are as follows:

1. **Procurement Procedures**: The common rule requires grantees to have written procurement procedures. It enumerates specific stipulations that must be included in the procedures. Attachment 1 sets forth proposed policy and procedures that would be used when spending federal funds, in compliance with the grants management common rule.

2. **Vendor protests**: The common rule requires local governments that spend grant funds to have written protest procedures to handle and resolve disputes relating to their procurements. Attachment 2 provides a procedure whereby a vendor can protest the specifications by which an invitation to bid or request for proposals will be evaluated, the way bids or proposals were evaluated, or the award of a contract. It should be noted that these procedures would apply to any invitation to bid or request for proposals, whether using federal grant funds or county funds.

Attachments (2)

Attachment 1

March 7, 2012

Fayette County, Georgia
Compliance With The Federal Common Rule
For Use Of Federal Funds

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PURPOSE

Grants of funds from the federal government, whether received directly from the federal government or through a state agency, require the county to follow laws, rules, and regulations governing the use of the funds. The procedures enumerated below are in compliance with requirements contained in the federal grants management common rule.

POLICY

The Purchasing Department will follow consistent purchasing procedures to assure the appropriate and prudent use of federal funds that are made available to the county for public purposes.

Note: Some procurement requirements may vary from one grant to another. For this reason, it is important for any department receiving a grant award to furnish a copy to the Purchasing Department. Purchasing staff will review the grant award and relevant documents pertinent to any invitation for bids (IFB), request for proposals (RFP), or other procurement actions which would use grant funds, comply with purchasing-related requirements, and maintain the documents in the purchasing files. Construction projects carry additional requirements, which should be reviewed carefully before contracts or purchases are executed.

I. PROCEDURES – PROCUREMENTS WITH FEDERAL FUNDS

A. The federal Common Rule requires the county to follow specific purchasing rules when spending federal grant funds. The Common Rule stipulates that local governments "will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section."

The standards to be met by the grant-receiving department are:

1. Maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of contracts or purchase orders.

2. Conduct a review of proposed procurements to avoid purchase of unnecessary or duplicative items. When appropriate, analyze lease-versus-purchase

alternatives or conduct other appropriate analyses to determine the most economical approach. Consider consolidating or breaking out purchases to reduce total costs.

3. Perform a cost analysis or price analysis in connection with every procurement action. For procurements which involve an IFB or RFP, an estimate must be made before receiving the bids or proposals.

    a. A *price analysis* will be appropriate for most contract procurements, in order to determine the reasonableness of a proposed contract price. This may involve a review of past similar contract prices, other local government experience, directly contacting a trade group, or other appropriate mechanisms.

    b. A *cost analysis* may be appropriate in some cases when offerors are required to submit a breakdown of estimated costs as part of a bid or proposal. Based on experience, this will be an unusual occurrence for the county, and may be necessary when adequate price competition is lacking, for certain sole-source procurements, or similar situations. The county will negotiate profit as a separate element of the price for each contract in which there is no price competition, and in all cases where a cost analysis is performed.

The standards to be met by the Purchasing Department are:

4. The county will make awards only to responsible contractors that possess the ability to perform successfully under the terms of a proposed procurement. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources, as appropriate.

5. All contracts awarded by the county, and using federal funds covered by these instructions, must contain the following provisions:

    a. Notice of any reporting required by the grant-awarding agency.
    b. Assurance of access by the federal grantor agency, the state, the county, the Comptroller General of the United States, or any duly authorized representative of these agencies to any books, documents, papers, or records of the contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.
    c. All required records will be retained by the contractor for three years after grantees or subgrantees make final payments and all other pending matters are closed.

6. The county will maintain records of the significant history of a procurement. In addition to information routinely kept, procurement folders will document:

    a. Rationale for the method of procurement (e.g. open-market purchase, IFB, or RFP);
    b. Rationale for selection of contract type, (e.g. sole source contract, cost reimbursement contract, or fixed price contract);

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c. Rationale for contractor selection or rejection; and
d. Basis for the contract price.

7. The county will use time-and-material type contracts (where the county is charged for direct labor hours and materials costs) only:
    a. After a determination that no other contract is suitable, and
    b. If the contract includes a ceiling price that the contractor exceeds at its own risk.

8. The county will be responsible for settlement of contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

9. Procurement transactions will be conducted in a manner providing full and open competition. Examples of situations considered to be restrictive of competition include, but are not limited to:
    a. placing unreasonable requirements on firms in order for them to qualify to do business,
    b. requiring unnecessary experience and excessive bonding,
    c. non-competitive pricing practices between firms or affiliated companies,
    d. non-competitive awards to consultants that are on retainer contracts,
    e. organizational conflicts of interest
    f. specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, or
    g. any arbitrary action in the procurement process.

10. The Purchasing Department will make contact with enough qualified vendors to provide for open and free competition. Potential bidders will not be precluded from qualifying during the solicitation period.

11. Contracts over $10,000 must contain a provision for potential termination of the contract for cause, or for convenience by the grantee or the county, including the manner by which termination will be effected and the basis for settlement.

In addition, the following standards will be met:

12. The county will maintain a written code of standards of conduct governing the performance of employees, including those engaged in the award and administration of contracts.

13. The county will maintain procedures for vendor protests to resolve procurement-related disputes. In all instances, the county will disclose protests to the grant-awarding agency.

14. The county will abide by all other requirements and standards stipulated in the federal Common Rule for the granting federal agency.

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II. PROCEDURES – VENDOR SELECTION

A. Purchases shall be made in conformance with county ordinances, including *Article V, Purchases; Sales* and county policies and procedures, such as policy #300.11, titled *Grants Management*. The director of purchasing has the authority to make purchases on the open market where the purchase price does not exceed the amount authorized in the ordinance. Other purchases can be made only with prior approval by the Board of Commissioners on a competitive sealed basis.

B. Competitive sealed procurement methods may include Invitations for Bids (IFB) or Requests for Proposals (RFP). Adequate public notice of an IFB or RFP shall be given prior to the bid opening date.

1. **Invitation for Bids**: Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The name of the bidder, the amount bid, and other information deemed relevant shall be recorded. The record and each bid shall be open to public inspection.

   Bids shall be evaluated based on the requirements set forth in the IFB. This may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The IFB shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the IFB.

   Corrections to, or withdrawal of, inadvertently erroneous bids may be done before an award is made. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the county or fair competition shall be permitted. Any decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on bid mistakes, shall be supported by a written determination made by the director of purchasing and placed in the IFB file.

   The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB.

2. **Request for Proposals**: Adequate public notice shall be given prior to the opening date of an RFP. Proposals shall be opened so as to avoid disclosure of contents to competing offers during the process of negotiation. A Register of Proposals shall be prepared, and shall be open for public inspection after contract award.

   The RFP shall state any and all factors to be used in evaluation of the proposals.

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As provided in the RFP, discussions may be conducted with responsible offerors, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Revisions of proposals may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined to be the most advantageous to the county, taking into consideration the evaluation factors set forth in the RFP.

C. Purchases other than competitive sealed procurement may be made using the following methods.

1. **Small purchases** are those not exceeding the authority granted to the director of purchasing by county ordinance. Purchases in this group may be made without sealed competition. Price or rate quotations shall be obtained from an adequate number of qualified sources to assure good value for the county, while promoting free and open competition among vendors. Procurement transactions shall not be artificially divided so as to constitute a small purchase.

2. **Sole source procurements** may be made when the director of the requesting department determines in writing that there is only one source for the required supply, service or other item.

3. **Emergency procurements** may be made in some situations, such as those stipulated in Article V of county policies and procedures, or *An Ordinance Authorizing the Suspension of Portions of the Code of Ordinances and Other Formalities During a State of Emergency*. The director of the requesting department shall provide a written determination of the basis for the emergency to the Purchasing Department, which shall be included in the contract or procurement file.

D. An IFB, RFP, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the county. A sound reason for taking this action will be documented and placed in the procurement file.

E. All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and may set forth the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

A “brand name or equal” description may be used as a means to define the performance or other requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

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All solicitations shall identify all requirements which the offerors must fulfill, and all other factors to be used in evaluating bids or proposals.

F. The county will use minority-owned businesses, small businesses, and women's business enterprises when practicable. To accomplish this, the Purchasing Department will:
    1. Place qualified businesses in these groups on the bidders list when they express an interest.
    2. Assure that these businesses are solicited whenever they are potential vendors.
    3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by these businesses.
    4. Establish delivery schedules, where requirements permit, which encourage participation by these businesses.
    5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
    6. Require any prime contractor(s) to take the steps listed in 1-5 above.

    The county will use the following definitions, in conformance with the Georgia Department of Administrative Services:
    - **Minority-owned business**: A business owned or controlled at least 51% by person(s) who are African American, Native American, Asian American, Hispanic/Latino, or Pacific Islander.
    - **Small business**: An independently owned and operated entity that has either (1) fewer than 100 employees or (2) less than $1 million in gross receipts per year, as defined by O.C.G.A 50-5-121.
    - **Women's business enterprise**: A business that is owned or controlled at least 51% by one or more women.

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Attachment 2

March 7, 2012

Fayette County, Georgia

Procedures Governing Protests

PURPOSE

In the event that a bidder, offeror, or contractor wishes to protest a solicitation, offer, or award of a contract, a protest can be effected by following the procedures below. The purpose of these procedures is to provide a mechanism to resolve conflicts of this nature in a way that is equitable, to the extent possible, to all concerned parties.

POLICY

It is the policy of the county to procure goods and services in a way that promotes the financial and other interests of citizens, while maintaining equity and fairness in its dealings with the business community. In the event that a protest should arise, the county's response must reflect a resolution that abides by all federal and state laws and county ordinances; provides equity to involved bidders, offerors, or contractors to the extent possible; and provides the goods or services needed to conduct county business.

PROCEDURES

An actual or prospective bidder, offeror, or contractor may protest a solicitation, offer, or contract award made by the county's Purchasing Department.

The protestor must present such protest in writing to the Director of Purchasing. A written protest may be presented in person, through traditional mail, or electronically. It must include the following information:

- Name and address of the protestor
- Identification of the procurement action being protested
- A statement of the reason for the protest.

Protests will be considered for the following three types of procurement actions:

1. **Protest regarding solicitation**: A written protest regarding solicitation must be received by the Purchasing Department no later than three (3) calendar days prior to the deadline to submit offers. Protests of this type may include claims of exclusionary or discriminatory specifications in the solicitation; challenges to the basis for award; claims that the procurement process violates a federal law, state law, or county ordinance or policy; or similar claims.

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Upon receipt of a timely solicitation protest, the Purchasing Department may postpone the deadline for submission of offers until resolution of the protest, if the needs of the county permit.

2. **Protest regarding offer evaluation**: A written protest concerning the evaluation of a bid or offer must be received by the Purchasing Department no later than five (5) calendar days after the county's award decision is made. This type of protest may challenge the county's determination of responsiveness of offers or errors in evaluation calculations, or may claim that the county violated a federal, law, state law, or county ordinance or policy in awarding the contract.

   Upon receipt of a timely protest regarding the evaluation of offers, the county may suspend its evaluation of offers until resolution of the protest, if the needs of the county permit.

3. **Protest regarding award of contract**: A written protest regarding a contract award must be received by the Purchasing Department no later than five (5) calendar days after award of the contract. After that time, the protest will not be deemed a valid protest, but may still be considered if deemed appropriate by the county. This type of protest will be considered only if the protestor demonstrates that the county violated a federal law, state law, or county ordinance or policy.

   Upon receipt of a timely protest of contract award, the county may suspend the contract until resolution of the protest, if the needs of the county permit.

The Director of Purchasing will notify any protestor of receipt of a timely protest and may, where appropriate, request additional information. The county may, at its sole discretion, meet with the protestor to review the issues raised in the protest.

After review of a protest, the Director of Purchasing will issue a written decision on the basis of the information provided by the protestor, the result of any meetings with the protestor, and the county's investigation of the facts. The decision shall be final. The written decision will include the reasons for the decision made, and any actions taken. A copy of the decision shall be provided to the protestor and any other intervening party.

Decisions will be made, and the protestor and other intervening parties will be notified of the decisions, within 14 calendar days of receipt of a written protest. If a final decision has not been made within that time frame, the protest will be considered denied by default.

If the protest is upheld, the county will take appropriate action to correct the procurement including, but not limited to, re-issuance of the solicitation, revised evaluation of the offers or the county's conclusion of the evaluations, or termination of the contract. If the protest is denied, the county will remove suspension and proceed with the procurement.

In the event that a contract is terminated, the county will compensate the vendor or contractor for any authorized performance under the contract up to the date of termination. The vendor or contractor will not be entitled to damages or payment for work not done on the contract at the time of termination. The county will not compensate a vendor or contractor for any profits that would have been realized if the purchase order or contract had not been terminated.

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