

Tuolumne Utilities District



Purchasing/Procurement Policy

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Tuolumne Utilities District
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Sonora, CA 95370

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Purchasing/Procurement Policy

Section 1.0 Procurement Mission Statement

The mission of the Procurement Division of the Finance Department is to meet the needs of the Tuolumne Utilities District (TUD or District) through the consistent supply of materials, goods, services, equipment, and support processes to carry out the organizational mission in a responsible, cost-effective, and timely manner.

Section 2.0 Purpose of the Procurement Policy

- 2.1 The purpose of this Policy is to define the practices and policies governing the procurement of supplies, materials, equipment and services, including construction and capital improvements, for District use and to relate the policies and principles to applicable provision of governing law and to District administrative policies. (Procurement Policy or Policy) The Policy is the written rule and regulation required by California Government Code section 54202 and serves as District administrative policies and procedures governing procurement activities. This Procurement Policy is compliant with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 2.2 By adoption of this Policy, the Board is empowering the General Manager (GM), or its authorized representative with certain duties and responsibilities that are essential for the day-to-day operation of the District. The General Manager delegates and shares the procurement of goods, materials and services with the Finance Director (FD) and those staff members given specific authority. In addition, the procurement of contracting and engineering, consulting and design for Capital Projects is delegated to the District Engineer (DE).

Section 3.0 Policy Statement

- 3.1 California law requires all local agencies to formally adopt policies and procedures governing the acquisition of materials, supplies, equipment and services as referenced below.

“California Government Code section 54202: Every local agency shall adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency. Purchases of supplies and equipment by the local agency shall be in accordance with said duly adopted policies and in accordance with all provisions of law governing same. No policy, procedures, or regulation shall be adopted which is inconsistent or in conflict with statute.”

- 3.2 This Policy is subject to change in the regular operation of the District, as it may be revised from time to time by the Board of Directors.

3.2.1 General Procurement Policies

- a. All purchases, agreements, services, leases, and/or contracts for materials, supplies, equipment, and other District property shall be made in accordance with this Policy.
- b. Procurement practices shall comply with laws, regulations and guidelines of the State of California and the provisions of grant or funding agreements, if applicable.

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- c. Any employee affecting any procurement action outside of the policies and procedures established within this manual and without Board authorization to do so, may be subject to disciplinary action and/or termination.
- d. Splitting or separating of material, supply, service, leave, and equipment orders or projects for the expressed purpose of evading the requirements of this Policy is strictly prohibited.
- e. Contract administration methods shall be maintained to assure that goods and services received by the District meet the terms and conditions of the contract.
- f. Purchasing authority for the acquisition of materials, supplies, equipment and services, including non-capital construction shall be centralized under the Procurement Division and in such persons who are officially designated within this Policy. The FD or its designee will ensure adherence to the guidelines prescribed by law, by legal opinions, and in accordance with established District policies and procedures.
- g. Authority related to all capital projects will follow the dollar thresholds set forth in this Procurement Policy. However, the Engineering Department will be responsible for all specifications, bidding, and contracts for capital improvement projects. The DE will ensure adherence to the guidelines prescribed by law, and in accordance with established District policies and procedures regarding capital improvement projects.
- h. Operation and maintenance purchases including materials, supplies, inventory items, and rentals do not require Board approval if services are performed by District forces. Operation and maintenance services performed by outside contractors and large equipment purchases require Board approval if the total cost is above the General Manager's approval authority as identified in Section 5.2 of this policy.
- i. Any amendment to any purchase order or contract that will increase the District's adopted annual budget will require Board approval.

Section 4.0 Procurement Authority

Subject to approval of the GM, or the GM's designee, the Finance Director and Purchasing Agent, in coordination with the DE or Operations Director, are authorized to:

- 4.1 Enter into contractual obligations on behalf of the District for the acquisition of supplies, materials, equipment, and services necessary to support the District functions in accordance with the Procurement Policy.
- 4.2 Obtain full and open competition in accordance with prescribed policies and procedures in a manner that presents the best overall value to the District.
- 4.3 Provide for the uniform treatment of vendors, suppliers, and contractors.

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- 4.4 Prepare and recommend revisions and amendments to procurement policies and requirements governing the purchase of materials, supplies, equipment and services and submit them periodically to the Board for approval. Revisions to procurement rules and requirements shall adhere to all related laws and industry standards.
- 4.5 Supervise the receipt and inspection of all materials, supplies, equipment, and services purchased to ensure conformance with specifications.
- 4.6 Recommend the disposition of surplus or unused supplies, materials, equipment, and scrap through sale or other means.
- 4.7 Maintain necessary records for the efficient operation of procurement.
- 4.8 Operate a centralized warehouse to efficiently manage commonly used supplies and materials as required to support District functions.

Section 5.0 Purchase Requisitions & Authorization Table

5.1 Purchase Requisitions

- 5.1.1 Purchase Requisitions (Requisitions) communicate to the Procurement Division, in clear and explicit terms, the needs of the requestor. The requisitioning process also provides a mechanism for obtaining the approvals necessary to authorize the Procurement Division to proceed with the acquisition.
- 5.1.2 A completed Requisition will be routed electronically for authorization by the requestor and submitted to the Purchasing Agent prior to attempting to obtain any goods, services, materials or equipment.
- 5.1.3 Requisitions should be prepared and submitted far enough in advance to enable the Procurement Division to meet the competition and formal bidding requirements specified in this Policy and to properly prepare the contract documents. Additionally, no purchase request will be broken into smaller units to avoid any provision of this Policy.
- 5.1.4 Prior to generation of Requisitions by staff that do not require a formal RFP/Bid process, quote(s) must be obtained (See Section 6). If the requestor has received quotes, they are to be attached to the Requisition electronically or emailed to the Purchasing Agent to evaluate and move forward in the procurement of the goods or service. If no quotes are provided, the Purchasing Agent will obtain quotes, but it may delay the processing of the Requisition.

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5.2 Procurement Authorization Table

Amount Up To	Approval Level
\$25,000	Department Superintendents/Supervisors
\$50,000	District Engineer, Finance Director, Human Resources Director, and Operations Manager
\$150,000	General Manager, or designee
\$150,000+	Board of Directors

5.3 Notes and Exceptions

5.3.1 In the absence of the designated approver for a given request, authorization will be obtained from his/her designee or the next highest authority in accordance with the Procurement Authorization Table.

5.3.2 In general, Purchase Orders will be closed at the end of each fiscal year. Purchases are expensed from the fiscal year budget in which goods are received, not the fiscal year in which Purchase Orders are issued.

5.3.3 Purchase orders representing multiple year contracts will remain open until projects are completed and Finance is notified to close the Purchase Order.

5.3.4 Procurements that require approval by the Board do not require electronic requisitions. The Purchasing Agent will create the Purchase Order after the Board of Directors has approved and signed the contract, or designated authority to the GM, or the GM's designee. The Purchase Order will then be delivered to the related Department.

5.3.5 In no case shall a contract be signed, and Purchase Order issued, unless sufficient funds have been budgeted and appropriated, or identified in the Capital Improvement Plan and adopted and approved by the Board during the annual budget process.

5.4 Check Request

5.4.1 A check request can be used to initiate payment for purchases not requiring a Purchase Order, such as for purchases of less than \$5,000, and non-discretionary purchases or payments.

Section 6.0 Competitive Selection Process

6.1 All procurements for materials, supplies, equipment, services, and construction shall employ a competitive selection process as set forth below. All procurements of \$150,000 and over will require sealed bidding.

6.1.1 Unless the bid process utilizes different criteria, and unless an exemption applies, bids shall be awarded to the "responsive" and "responsible" bidder who submits the lowest bid.

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- Responsive shall mean a bidder whose bid is in conformance with the requirements of the bid solicitation, including specifications and the District's terms and conditions. Bidders who substitute terms and conditions or who qualify their bids in such a manner as to limit their liability may be considered non-responsive.
- Responsible refers to the ability of the bidder to successfully fulfill a contract. Prospective bidders may be requested to furnish proof of financial resources, appropriate insurance coverage, a list of current or previous customers, and other pertinent data. Such action may be taken after receipt of bids.

6.1.2 In determining the lowest "responsible" bidder, the following elements shall be considered in addition to price:

- a. That the products offered provide the quality, fitness, and capacity for the required usage;
- b. That the bidder has the ability, capacity and skill to perform the contract satisfactorily and within the time required; and
- c. That the bidder's experience(s) regarding past purchases by the District or other public agencies demonstrates the reliability of the bidder to perform the contract.

6.1.3 In determining the lowest "responsive" bidder, the following elements, among others, shall be considered in addition to price:

- a. Whether the bidder has read the applicable plans and specifications, has provided all the information requested by the District, followed the bid instructions, and has provided a bid in the manner requested by the District.

6.2 Bid Requirements Table

<u>Purchase Amount</u>	<u>Requirements</u>
\$ 0 - \$5,000	Informal Quotes
\$ 5,001 - \$150,000	Informal Bids
\$ 150,001 +	RFP/Sealed Bids

6.3 Informal Quotes – For purchases less than \$5,000, quotes may be obtained through an informal process (e.g. web browsing or phone calls) and documentation of the bids is recommended but not required. Although bid documents are not required, a Requisition and Purchase Order may be issued to document the purchase if the staff member making the purchase wishes to do so.

6.4 Informal Bids

6.4.1 For all procurement of materials, supplies, equipment, services, and construction of \$5,000 up to \$150,000, at least three vendors must be contacted for bids/price quotations and the purchase shall be awarded to the lowest responsible and responsive bidder, unless otherwise provided, as discussed below.

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6.4.2 Bids may be solicited from prospective bidders by written request, telephone, legal advertising or public notice (including District website). Regardless of solicitation method, all vendors must receive the same information about specifications and requirements of the product or service, and all bids submitted shall not be shared with any other bidder until the bid is awarded. Bidders may be advised that they will be notified only if they submitted the successful bid.

6.4.3 All bids received must be documented and retained by the requesting department or scanned into Tyler Content Manager.

6.5 Formal Bids

6.5.1 For all procurement of materials, supplies, equipment, services, and construction in excess of \$150,000, bids or proposals shall be solicited from a minimum of three vendors. A written Notice Inviting Bids (NIB) or Request for Proposals (RFP) must be used to document the specifications and requirements of the product or service.

6.5.2 The NIB or RFP must be made publicly available on the District's website and, if practicable, in a newspaper of general circulation. If the NIB/RFP is also sent directly to prospective vendors, at least three vendors shall receive the notice.

6.5.3 Vendor responses (proposals/bids) must be submitted in written form and retained on file by the manager of the initiating department. Contracts shall be awarded in a manner most beneficial to the District as further explained in the following sections.

6.6 Award of Bids – The award of a contract by the District shall take one of two paths. If in the RFP or NIB the District committed itself to award the contract to the lowest responsive and responsible bidder, the District is obligated to award the contract as stated, unless it can be rejected for a reason set forth below. If in the RFP or NIB the District did not commit itself to award the contract to the lowest responsive and responsible bidder, or if there was no RFP or NIB issued, then the District may accept the bid that is most beneficial to the District, without regard to price.

6.7 Rejection of Bids – If the District has accepted bids for materials, supplies, equipment, services, or construction, and the District desires to award the contract to a bidder that is not the lowest bidder, then the District shall follow this procedure:

6.7.1 Bids where the District Did Not Commit Itself to Accept the Lowest Bid – The District may reject any bid and select the one that is most beneficial to the District.

6.7.2 Bids where the District Did Commit Itself to Accept the Lowest Bid – If the District advertised or stated the District will award the contract to the lowest responsive and responsible bidder, the District is obligated to award the contract as stated, unless the lowest bid is not responsive or is from a non-responsible bidder. If the District believes the lowest bid is either not responsive or responsible, then the District may be able to award the contract to the next lowest responsive and responsible bidder after discussing the matter with District Counsel.

Section 7.0 Exemptions from Competitive Solicitation

The competitive solicitation/bid process will not be required for the acquisition of goods and services under the following circumstances.

7.1 Non-Discretionary Purchases – These purchases/payments are not readily adaptable to the open market and competitive selection process. Non-discretionary purchases do not require the issuance of a purchase order, and payments in excess of the General Manager authorization limit do not require Board approval. Examples of non-discretionary purchases include, but are not limited to:

- Bank charges and fees;
- Debt Service payments;
- Employee reimbursements;
- Insurance claims and premiums;
- Medical reimbursement payments;
- Payroll related tax liabilities;
- Memberships, dues, and subscriptions;
- Pension and OPEB payments;
- Travel expenses;
- Utilities;
- Water purchases; and
- One-time fees and permits.

7.2 Cooperative Procurement – The District may participate in purchases and contracts established by other political jurisdictions, provide the cooperative agreement is established following a competitive bid process. The cooperative purchase may be authorized according to the authorization table.

7.3 Inventory Replenishment – Purchases to replenish the District’s warehouse inventory within established inventory re-order levels require no prior authorization provided that the vendor being utilized has been selected within the last twenty-four months as the designated vendor for the items, or class of items, to be purchased.

7.4 Sole Source – Commodities, services, and equipment which can be obtained from only one vendor are exempt from competitive bidding. Sole source purchases may include proprietary items sold directly from the manufacturer, equipment which has been standardized by the District, items that have only one distributor authorized to sell in this area, agreements for maintenance of computer software the District owns or a certain product that has been proven to be the only product acceptable.

7.5 Emergency Purchases – Emergency purchases may be made without competitive bidding when unforeseen circumstances present an immediate risk of:

- harm or hazard to the public health, safety, and welfare;
- damage to District property; or
- serious interruption of District essential services.

Since emergency purchases do not normally provide the District an opportunity to obtain competitive quotes, sound judgment shall be used in keeping such orders to an absolute minimum. In addition, the following requirements shall apply:

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- a. The Finance Department shall be contacted as soon as possible to obtain a Purchase Order number;
- b. A completed purchase Requisition shall be submitted within two working days, or as soon as the information is available;
- c. Documentation explaining the circumstances and nature of the purchase shall be maintained by the applicable department superintendent or manager; and
- d. If the emergency purchase causes any budget line item to exceed the approved budget, it shall be the responsibility of the department requesting the purchase to obtain subsequent Board of Directors approval for reserve funding or to make a budget transfer to cover the purchase. Approvals for a budget transfer must be given by the applicable department superintendent or manager as determined by the authorization table.

Section 8.0 Change Orders

Any substantial change to a purchase order or contract shall be documented as a change order.

- 8.1 The General Manager or designee may approve change orders to contracts for the procurement of supplies, equipment, contracts for professional services, and other goods and services provided:
 - 8.1.1 The change order is within the scope of the approved contract and the cost of the changed work does not exceed the adopted budget;
 - 8.1.2 The cumulative total of all change orders is within 20% of the original contract amount; and
 - 8.1.3 Taxes, shipping, and handling may cause the purchase order to exceed the authorized amount. These items do not require a change order, even if they exceed 20% of the original purchase order amount.
- 8.2 The General Manager or designee may approve change orders for Capital Improvement Plan (CIP) projects provided that the change order is within the scope and does not exceed the total budget of the project approved by the Board; and
 - 8.2.1 The cumulative total for all change orders do not exceed 20% of the original contact amount; and
 - 8.2.2 Change orders for CIP in excess of these amounts and change orders for CIP reflecting a substantive change in scope and nature of the project shall be submitted to the Board for approval.

Section 9.0 Professional Consultant Selection

- 9.1 The following Policy shall apply to professional consultant services in connection with public improvement projects and governmental operations of the District. For purposes of this Policy, consultants include individuals, partnerships, corporations, joint ventures, associations or other

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legal entities, or any other combination of firms or persons competent to perform the required services. The selection of consultants shall be based upon the experience of the consultant, knowledge of the subject matter, demonstrated ability to perform similar services within budget and the time allowed, and the total estimated cost to the District. Above all, the goal of this Policy shall be to create a competitive environment where the best value can be achieved.

- 9.2 The General Manager or its designee has the authority to issue contracts for consultant services up to \$150,000 when funds have been approved in the budget for such services. For projects estimated to cost more than \$150,000, at least three requests for proposal should be solicited and evaluated for demonstrated competence if possible. All consultants will submit written proposals in response to requests for services.
- 9.3 The evaluation and a subsequent recommendation to the General Manager or its designee for consultant services shall be conducted by the individual responsible for the project. Before a recommendation is made to the Board, as may be required if the services are estimated to cost in excess of \$150,000, the fee for the services shall be negotiated. If a mutually satisfactory fee cannot be agreed upon, negotiations shall be terminated; thereupon another consultant shall be selected, and fee negotiations undertaken.
- 9.4 Award of a contract to a consultant shall be made only when sufficient funds have been appropriated in the project budget and all other applicable provisions in any applicable agreements are satisfied. The only exceptions are those services which relate to the processing of development plans that will be paid for by the developer.

Section 10.0 Conflicts of Interest

No member, officer, or employee of the District, or their designees or agents, and no public official who exercises authority over or responsibility with respect to purchasing during his or her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any purchase, agreement or sub agreement, or the proceeds thereof, for any purchase or purchase agreement. The full Conflict of Interest Code of the Tuolumne Utilities District is incorporated herein by reference.

Section 11.0 Unauthorized Purchases

- 11.1 Purchase Orders shall be issued prior to ordering supplies, equipment, and service and not “after the fact” for work already done or materials already ordered.
- 11.2 Except for emergencies or other authorized exemptions stated in these guidelines, no purchase of supplies, services, or equipment shall be made without an authorized Purchase Order. Otherwise:
 - 11.2.1 Such purchases are void and not considered an obligation of the District;
 - 11.2.2 Invoices without an authorized Purchase Order may be returned to the vendor unpaid;
and

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- 11.2.3 The person ordering the unauthorized purchase may be held personally liable for the costs of the purchase or contract and may be subject to disciplinary actions in accordance with District policy.

Section 12.0 California County Water District Status

Notwithstanding anything to the contrary in this Policy, the District is a California County Water District and therefore is not mandated by State law to competitively bid any purchases, including those for public works projects and/or capital expenditures. The District is free to enter into non-bid contracts for public works, to purchase materials, services and supplies, to contract for design-build work, to utilize job-order contracting and to enter into cooperative purchasing arrangements for the design, construction and maintenance of public works, or undertake any other form of contracting determined to be in the District's best interest, except as otherwise expressly restricted by law.

Section 13.0 Uniform Guidance Requirements

For contracts funded with federal awards containing applicable Federal, State, and local procurement laws and regulations as noted in Title 2 U.S. Code of Federal Regulations (CFR) Section 200.318, the District must comply with the procurement requirements set forth in the Uniform Guidance. These requirements, such as record retention and required documentation, are detailed in Appendix A – Section 200.18 General Procurement Standards, and include, but are not limited to:

- 13.1 Verification that procurement provides for full and open competition.
- 13.2 Documentation for the cost or price analysis resulting in contractor selection.
- 13.3 Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items.
- 13.4 Proof that the District has verified via the Federal EPLS website (www.sam.gov) that each contractor has not been suspended or debarred from bidding on federally funded projects.
- 13.5 Certification from the contractor that subcontractors used by the approved contractor have not been suspended or debarred.
- 13.6 Justification for lack of competition when competitive bids are not obtained.
- 13.7 Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency.

APPENDIX A – § 200.318 General procurement standards

- (a) The non-Federal entity must use its own documented 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.
- (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 performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must 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 must 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 mean 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.

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- (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.
- (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 time and material type contracts 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 material 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.