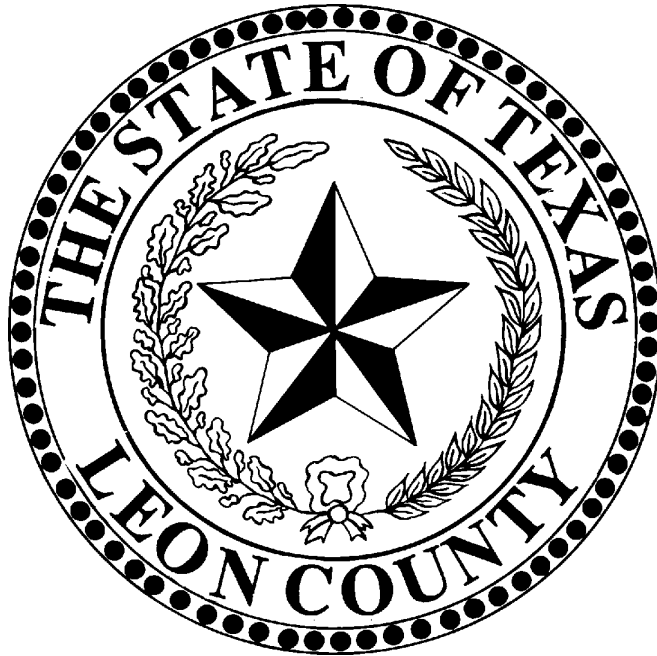


**Leon County  
Purchasing Policies  
&  
Procedures  
Manual**



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## COUNTY OF LEON PROCUREMENT POLICIES AND PROCEDURES

### Chapter One: Introduction

#### 1.1 General Purpose

The purpose of this Manual is to:

- help ensure compliance with the provisions of the County Purchasing Act, Subchapter C of Chapter 262 of the Local Government Code, and other applicable State and Federal requirements governing the acquisition of supplies, materials, equipment, and services by employees of Leon County;
- establish, pursuant to Texas Local Government Code § 262.011(o), additional rules and regulations under which the purchase of such supplies, materials, equipment, and contractual services occur; and
- Incorporate, for grants management and audit requirements on federally funded projects and contracts, additional procedures to govern the purchases of supplies, materials, equipment, and contracted services.

All employees whose duties include processing requisitions for the purchase of items, goods and services through the County Auditor's Office are required to comply with the policies and procedures set forth in this Manual. Accordingly, they must familiarize themselves with the provisions contained herein.

The provisions contained within this Manual are not intended to be all inclusive. Rather, it is intended to set forth policies and procedures relating to the most frequently discussed topics. Numerous statutes exist that mandate additional requirements and procedures. Should the terms of State or Federal law conflict with any provision contained within this Manual, the provisions of the State or Federal law will supersede the provisions of this Manual, unless required differently under Federal law, but only to the extent of the conflict.

Employees who have questions relating to either the provisions of this Manual or purchasing policies and procedures in general are encouraged to direct their questions to the Buyer who has been assigned to their department.

#### 1.2 Laws Governing Purchasing

Laws, in addition to the County Purchasing Act, that may govern or impact purchasing in given circumstances include but are not limited to the following:

- (a) Competitive Bidding on Certain Public Works Contracts, Subchapter B of Chapter 271 of the Texas Local Government Code;
- (b) Contracting and Delivery Procedures for Construction Projects, Chapter 2269 of the Texas Government Code;

- (c) Contracts with Governmental Entity, Nonresident Bidders, Subchapter A of Chapter 2252 of the Texas Government Code (does not apply to a contract involving federal funds, 2252.004);
- (d) Disclosure of Certain Relationships with Local Government Officers, Chapter 176 of the Texas Local Government Code;
- (e) Cooperative Purchasing Program, Subchapter F of Chapter 271 of the Texas Local Government Code;
- (f) Disclosure of interested Parties, Section 2252.908 of the Texas Government Code;
- (g) Interlocal Cooperation Act, Chapter 791 of the Texas Government Code;
- (h) Payment for Goods and Services (commonly known as the Prompt Payment Act), Chapter 2251 of the Texas Government Code;
- (i) Prevailing Wage Rates for Construction of Public Works, Chapter 2258 of the Texas Government Code;
- (j) Professional Services Procurement Act, Subchapter A of Chapter 2254 of the Texas Government Code;
- (k) Public Property Finance Act, Subchapter A of Chapter 271 of the Texas Local Government Code;
- (l) Public Works Performance and Payment Bonds, Chapter 2253 of the Texas Government Code;
- (m) Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments, Chapter 171 of the Texas Local Government Code; and
- (n) Texas Workers Compensation Act, Subtitle A of Title 5 of the Texas Labor Code.

**Chapter Two:  
Authority of the  
Leon County Auditor's Office**

**2.1 Checks and Balances**

Commissioners Court is the governing body of the County and determines County policy largely through control of its budget. The County Auditor is appointed by the District Judges and has the obligation to ensure the strict enforcement of state law and the duty to approve or disapprove expenditures of county funds he or she believes to be unlawful.

**2.2 Duties**

It is the duty of the Leon County Auditor's Office to make all purchases of supplies, materials, and equipment except those for which competitive bidding is required. On those items that require a competitive bid, be it by hard bid (IFB), request for proposal (RFP), or a similar method, the County Auditor is charged with complying with the terms of the County Purchasing Act and with developing procedures that enable the County to also comply.

The Auditor is also required to contract for repairs to all Leon County owned property except those contracts required by law to be made on competitive bid. The County Auditor is charged with maintaining an inventory of Leon County property that is to be filed annually with the Leon County Auditor. Currently, this is done in July. All surplus

property must be transferred to the Auditor when not actually needed by any Leon County Department.

### **2.3 Sanctions**

It is unlawful for any Leon County employee to make purchases other than through the Leon County Auditor's Office with proper authorization in the form of a Leon County Purchase Order or by the use of county purchasing/credit card. A violation of this provision, as provided by Texas Local Government Code §262.011(m) is a misdemeanor punishable by a fine of not less than \$10 or more than \$100. In accordance with 262.011(m), each act is a separate offense. Any attempted purchase made without proper authorization from the Auditor's Office will not be honored by Leon County and payment thereof may become the personal responsibility of the individual employee making the commitment. In addition, the employee may be subjected to disciplinary proceedings and, should the District Attorney warrant such action necessary, criminal proceedings filed against them.

Additionally, in accordance with Section 262.034 of the Local Government Code:

- 262.034(a): A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of the County Purchasing Act; such offense is a Class B misdemeanor.
- 262.034(c): A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates the County Purchasing Act, other than by conduct described by Subsection 262.034(a); the offense under this Subsection, 262.034(c), is a Class C misdemeanor.

## **Chapter Three: General Statements**

### **3.1 Mission**

The mission of the Leon County Auditor's Office is to obtain quality items, goods, supplies, materials, equipment, and services at the lowest and best price while operating in accordance with State and Federal laws that apply to county purchasing and with the highest standards of ethical conduct.

### **3.2 Purpose**

The purpose of this Manual is to establish effective purchasing policies and procedures for the purchase and management of items, goods, supplies, equipment, and services consistent with best value principles and industry practices while adhering to applicable laws and regulations.

### **3.3 Scope**

The scope of these policies and procedures apply to all purchase orders and other methods of payment as prescribed by the Leon County Auditor and his/her authorized/designated personnel.

### **3.4 Implementation**

The Auditor is responsible for the implementation of the policies and procedures set forth in this Manual. The Auditor may also establish any additional procedures and/or rules the Auditor deems necessary to ensure compliance.

## **Chapter Four: Procurement Ethics**

### **4.1 General Principles**

Leon County is committed to the highest ethical standards. Therefore, it is a serious breach of the public trust to subvert the public purchasing process by directing purchases to certain favored vendors, or to tamper with the competitive bidding process, whether it's done for kickbacks, friendship, or any other reason. Since misuse of the purchasing power of a local government carries criminal penalties, and many such misuses are from a lack of clear guidelines about what constitutes an abuse of office, the Code of Ethics outlined below must be strictly followed.

Leon County also requires ethical conduct from those who do business with the County.

The Leon County Auditor is committed to the highest ethical standards and believes that every one of his/her employees should be committed to the highest standard of conduct in the performance of their duties. As servants and stewards to the public, each employee of the Auditor's Office is expected to readily acknowledge that nothing less should be expected of them.

Public employment is a public trust individual and collective adherence to high ethical standards is central to the maintenance of public trust and confidence in government. It is a serious breach of the public trust for any public employee to subvert the public purchasing process by attempting to direct purchases to certain favored vendors. It is also a serious breach of the public trust for any such employee to alter, tamper with or design the competitive bidding process in any manner or for any reason that would hamper or defeat the requirement that all bidders be placed upon the same plane of equality.

The Auditor's Office also requires ethical conduct from those who desire to become vendors or otherwise do business with Leon County. Businesses who seek to become a vendor of Leon County must complete the process as prescribed in Section 5.0, Vendor Qualification.

It is the intention of the Auditor to post the Auditor's policies relating to ethics in all bids and proposals issued to the public.

### **4.2 Code of Ethics -Policy**

The following is adopted from the American Bar Association's 2000 Model Procurement Code for State and Local Governments, Section 12-201 on Standards of Conduct:

Public employment is a public trust. It is the policy of Leon County to promote and balance the objective of protecting governmental integrity and the objective of facilitating the recruitment and retention of personnel needed by Leon County. Such

policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public office.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, public employees should conduct themselves in such a manner that fosters public confidence in the integrity of the Leon County procurement process.

To achieve the purpose of this policy, it is essential that those doing business with Leon County also observe the ethical standards prescribed herein.

#### **4.3 General Ethical Standards**

The following is derived from the American Bar Association's 2000 Model Procurement Code for State and Local Governments, Section 12-204, Conflict of Interest:

It shall be a breach of ethics to attempt to realize personal gain through public employment with Leon County by any conduct inconsistent with the proper discharge of the employee's duties.

It shall be a breach of ethics to attempt to influence any public employee of Leon County to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Leon County to participate directly or indirectly in a procurement when the employee knows that:

- The employee or any member of the employee's family, has a financial interest pertaining to the procurement;
- A business or organization in which the employee or any member of the employee's family has a financial interest pertaining to the procurement; or
- Any other person, business, or organization with whom the employee or any member of the employee's family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

If a potential conflict of interest, or actual conflict of interest, exists or is later discovered, the employee shall promptly notify the Auditor in writing and the employee shall remove him/herself from the County procurement.

#### **4.4 Gratuities and Kickbacks**

The following is derived from the American Bar Association's 2000 Model Procurement Code for State and Local Governments, Section 122-206, Gratuities and Kickbacks:

- (1) **Gratuities.** It shall be a breach of ethics for any person to offer, give, or agree to give any employee or former employee of Leon County, or for any employee or former employee of Leon County to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for

ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or bid pending before this government.

- (2) **Kickbacks.** It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Leon County, or to any person associated therewith, as an inducement for the award of a contract, subcontract, or order.
- (3) **Contract Clause.** The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation by Leon County.

#### **4.5 Prohibition against Contingent Fees**

The following is derived from the American Bar Association's 2000 Model Procurement Code for State and Local Governments, Section 12-207, Prohibition against Contingent Fees:

- (1) **Contingent Fees.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Leon County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (2) **Representations of Contractor.** All prospective contractors, by signing and submitting their respective bid, proposal, or qualifications, represent that they have not retained anyone in violation of the above section prohibiting contingent fees. Additionally, by the acceptance of the Purchase Order and/or the furnishing of goods or services pursuant to the Purchase Order, all vendors of Leon County represent that they have not retained anyone in violation of the prohibition against contingent fees set forth in Subsection (1).
- (3) **Contract Clause.** The representation that contractor has not retained anyone in violation of Subsection (1) shall be conspicuously set forth in every contract and solicitation of Leon County.

#### **4.6 Confidential Information**

- (1) ABA 2000 Model Code. The following is derived from the American Bar Association's 2000 Model Procurement Code for State and Local Governments, Section 12-209, Use of Confidential Information:
  - (i) It shall be a breach of ethics for any employee or former employee of Leon County to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.
- (2) Solicitation and Proprietary Information. Employees shall keep vendor proposal information obtained during the course of a solicitation confidential until after contract award and execution. Additionally, employees shall keep the proprietary information of vendors and prospective vendors confidential, and this duty continues to exist even after the award and execution of contract. To facilitate compliance with confidentiality each member of an evaluation committee shall be

required to sign a confidentiality agreement or memorandum. Failure to comply with confidentiality requirements may compromise a procurement and result in the cancellation of a procurement.

#### **4.7 Conflict of Interest**

(1) Employees shall avoid any activity that would create a conflict of interest. Conflicts exist in any relationship where the County's best interests may be different from the employee's best interests or the best interest of someone associated with the employee. Conflicts of interest include an employee participating in any way in any procurement in which:

- The employee or any member of the employee's family has a financial interest in the results of the County procurement process;
- A business or organization in which the employee, or any member of the employee's family, has a financial interest in the result of the County Procurement process; or
- Any other person, business, or organization with whom the employee or a member of the employee's family is negotiating for or has an arrangement concerning prospective employment.

(2) Perception. Employees shall avoid the appearance of unethical or compromising practices in relationships, actions, and communications associated with County.

(3) The breaches described in Sections 4.1 through 4.6 constitute conflicts of interests.

(4) Employees will keep proposers and vendors proprietary information confidential. Employees will keep Leon County's procurement information obtained through an RFP, RFQ, or IFB confidential to the extent allowed by State and Federal law.

(5) Employees will not solicit or accept money, loans, gifts, favors, or anything of value from present or potential vendors. Provided however, that edible goods with a value of less than \$25.00 may be acceptable from present vendors if the edible goods are shared with the entire staff of the department, if it will not influence or appear to influence a purchasing decision, if the employee has not solicited the item, and if the vendor is not or will not be a vendor on a contract involving federal funds. Even nominal value gifts from vendors on contracts involving federal funds are prohibited and shall not be allowed. If anyone is in doubt as to whether a transaction complies with this policy, the individual should disclose the prospective transaction to the Auditor for interpretation.

(6) Violations of State and/or Federal law pertaining to public employees and that pertain to, or influence procurement decisions constitute conflicts.

(7) Federal requirement adopted. In accordance with requirements of Federal law, the following constitute conflicts of interests and are prohibited:

- (a) No member of the County's governing body, and no employee, officer, or agent of the County shall participate in the selection or in the award of administration of a subcontract supported by grant funds if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when: 1.) the employee,

officer, or agent, 2.) any member of his or her immediate family, 3.) his or her partner, or 4.) any organization which employs, or is about to employ any of the above; has a financial or other interest in the firm or person selected to perform the subcontract. Further, the County shall comply with Chapter 171 of the Texas Local Government Code and 24 C.F.R. § 570.489(h).

- (b) In all cases not governed by Subsection (a) of this Section, no person specified in subsection (c) of this Section, who exercises any functions or responsibilities in connection with the planning and carrying out of the project, or who are in a position to participate in decision making process or gain inside information with regard to activities under this Agreement, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for (1) year thereafter.
- (c) The conflict of interest provisions of Subsection (b) applies to any person who is an employee, agent, consultant, officer, elected official, or appointed official of the County or of the Contractor.
- (6) Violations of the Code of Ethics and Conflicts of Interests may disqualify a vendor from consideration of award of contract, serve as grounds for the termination of contract, and depending on the violation may be criminally sanctioned against the employee, official, and/or vendor. Anyone becoming aware of a violation of this Chapter 4 should report the violation to the Leon County Auditor, who, at his sole discretion, may confer with Leon County District Attorney's Office regarding the violation.

## **Chapter Five: Vendor Qualifications and Insurance Requirements**

### **5.1 Vendor Preliminary Qualifications**

Parties seeking to obtain qualified vendor status with the County of Leon must complete and return the forms contained in a Vendor Qualification Packet to the Auditor's Office, these include:

- Form PEID: Person /Entity Information Data
- Form W-9: Request for Taxpayer Identification Number and Certification
- Form CIQ: For vendor doing business with local government entity (this form is to be returned to the County Clerk's Office)
- Non-Collusion Affidavit Acknowledgment and Certification regarding Debarment, Suspension, and Other Ineligibility

These forms and instructions relating to properly completing them can be obtained upon request from Auditor's Office staff or online by visiting:  
<http://www.co.leon.tx.us/page/leon.County.Auditor>

### **5.2 Insurance Requirements**

Qualified Vendors performing work or providing services at or on any County owned facility and/or property are required to maintain, at minimum, the following insurance:

- a policy of third party liability and property damage insurance issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners of the State of Texas, with coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of services rendered by the vendor and providing that the amount by reason of services limits shall be not less than the following sums:
  - a) for damages arising out of bodily injury to or death of one person in any one accident: \$100,000.00 Dollars;
  - b) for damages arising out of bodily injury to or death of two or more persons in any one accident: \$300,000.00 Dollars; and,
  - c) for any injury to or destruction of property in any one accident: \$100,000.00 Dollars.
  
- Workers' Compensation Insurance Policy if there is more than one employee, for all employees, including but not limited to full time, part time, and emergency employees employed by the Vendor. Alternatively, Vendors may establish a self-insurance program and, utilizing the services of a third party administrator, self-insure against Workers Compensation claims as is permitted by the Texas Workers Compensation Commission. But Vendors may not elect to "go bare" for Workers Compensation purposes.

All policies and/or Certificates of Insurance, with the exception of Workers Compensation, shall include the County of Leon as an additional named insured and waive subrogation.

Current insurance certificates certifying that such policies as specified above are in full force and effect must be furnished by Vendors to the Auditor's Office prior to the Vendor being permitted to perform work or to provide services. In the case of Workers Compensation, a letter certifying that the Vendor is self-insured will suffice.

On occasion, other forms of insurance and additional requirements may be required of Vendors as a condition of performing work or providing services, and the minimums specified herein shall not serve as the maximum insurance coverage and amounts that may be required. Such additional requirements, if any, will be found in the County's advertisement for bids, request for proposals, invitations to bid, or request for qualifications, as applicable. All vendors are required to familiarize themselves with any additional insurance requirements that may be contained in any such bid or proposal package.

## **Chapter Six: Purchasing Staff Guidelines**

### **6.1 Judgment**

The Auditor's office designated staff member(s) authorized to make purchases on behalf of Leon County and are expected to determine, using their best judgment, the most appropriate and effective method of acquisition on each requisition or request for purchase. In so doing, they may authorize purchases from:

- Leon County contracts currently in effect;
- contracts managed by the Texas Procurement and Support Services (TPASS) division of the Texas Comptroller of Public Accounts (Texas Local Govt Code 271.083);
- contracts managed by the Department of Information Resources (DIR);
- contracts solicited, awarded, and managed by the Houston-Galveston Area Council (HGAC);
- contracts obtained through cooperative purchasing agreements and with other local governments or local cooperative organizations (Texas Local Govt Code 271.102); or
- catalogue purchases and/or other authorized sources.

In exercising their judgment, the goal and objective of such staff members is to acquire the product or service that, in their opinion, meets the needs of the user department while ensuring that the method selected for acquisition achieves lowest cost and the best value per specifications, conformance to standards of ethical conduct, and compliance with all applicable laws, rules, and regulations.

On occasion, the judgment of the Auditor or the designated purchasing staff member(s) will not coincide with the judgment of the person making the requisition request. While every effort will be made to accommodate differences, the ultimate decision must lie with the Auditor.

## **6.2 Purchasing Authority**

The primary authority to obligate Leon County funds for the purchase of supplies, materials, equipment, and services (including repairs and maintenance agreements) by means other than competitive bidding as set forth in the County Purchasing Act has been granted to the County Auditor. The primary purchasing document used by the Auditor's Office to secure such supplies and/or equipment is the Leon County Purchase Order (PO).

## **6.3 Obligation of Funds**

A Leon County Purchase Order represents a binding written agreement between the County and a seller that normally obligates Leon County to pay for specified goods or services when they are delivered in accordance with the purchase order's (PO) order terms and conditions. The Purchasing Department issues all purchase orders. All other commitments, written or verbal, are unauthorized purchases and, in most instances, will not be binding on Leon County. Upon discovery of an unauthorized purchase, the Auditor will notify the Commissioners Court for further action deemed necessary. In addition, should the Auditor feel that criminal activity of some sort has occurred, the Auditor will forward the information he/she has received to the District Attorney for such criminal action, if any, the District Attorney feels is warranted.

## **6.4 Request for Acquisition**

Requests for acquisition made to Purchasing Staff must utilize the following procedures:

- a submittal of a Requisition by the end user department is first made;
- a Requisition is required for all purchases regardless of dollar value;
- the elected official/department head, or duly authorized staff person(s) within these offices, prepares the requisition; the requisition must be prepared as far in advance of the required delivery date to enable the proper procurement processes to be enacted and to allow time for delivery by the vendor;
- price quotations (whenever required for justification) must be submitted with the requisition forms provided by the Auditor's Office. These forms and their instructions can be obtained from Auditor's Office.

Upon obtaining any additional required information a purchase order will be issued from the Auditor's Office.

### **6.5 Credit Card(s)**

Upon request, a County employee or Elected Official may (temporarily) be issued a credit card that will entitle him/her to make purchases. Departments and Elected Officials interested in utilizing a credit card are instructed to make a request for the issuance of such a card to the Auditor's Office. In addition, they must adhere to and familiarize themselves with the terms and provisions of the Credit Card Policy found in the Personnel Policy Manual.

### **6.6 Procurement Categories Dependent on Anticipated Price**

The Leon County Auditor has established purchasing categories for the purchase of all goods and services based on the anticipated price of such good or service. Each category prescribes what information must be obtained from vendors, prior to the issuance by Auditor or designated staff, of a purchase order. The purchasing categories are:

- **CATEGORY I – PURCHASES LESS THAN \$15,000**

The individual department head may exercise discretionary purchasing and acquisition of such purchases as authorized within the scope of the purchasing procedure and within the authority provided within the current fiscal year budget. These purchases will be accomplished through the use of requisitions issued directly by the department and approved by the Department Head. Competitive quotations are encouraged, but not required. All such purchases require a purchase order issued by the Auditor's Office. The Auditor's Office will verify budget authorization.

- **CATEGORY II – PURCHASES OF \$15,000 OR MORE BUT LESS THAN \$50,000**

Three verbal or written quotations, at a minimum are required for purchases of goods and services with a total cost of \$15,000 or more, but less than \$50,000. The ordering department may solicit the quotations or request the Auditor's Office to do so. The ordering department is responsible for initiating the requisition. All such purchases require a purchase order issued by the Auditor's Office. Approvals by the Department

head are required before a purchase order will be assigned. The Auditor's Office will verify budget authorization.

- **CATEGORY III – PURCHASES OF \$50,000 OR MORE, BUT LESS THAN \$100,000**

A minimum of three written quotations are required to be obtained. Upon approval of the Auditor's Office, the requesting department may solicit the quotations or leave the responsibility with the Auditor's Office. If authorized to obtain the quotations, the requesting department must submit the written quotations to the Auditor's Office for review and approval prior to the issuance of a purchase order. The requesting department remains responsible for initiating the requisition. The Auditor's Office will verify budget authorization.

- **CATEGORY IV – PURCHASES OF \$100,000 OR MORE**

Formal sealed competitive written invitations to bids (IFB), Requests for Proposals (RFP), or Competitive Sealed Proposals, must be secured by the Auditor's Office in accordance with the terms and provisions of the County Purchasing Act. The County Purchasing Act is located at Subchapter C of Chapter 262 of the Local Government Code, currently Sections 262.021 through 262.037. Generally, competitive bids or requests for proposals are required although some exceptions exist. Should the Auditor's Office determine that an exemption to competitive bidding or an RFP is warranted, he/she will make application for the granting of an exemption to the Leon County Commissioners Court as authorized by law. The Auditor's Office and the end user department(s) will evaluate the bids received via competitive bidding or the RFP process and the quotes obtained via the exemption process to the competitive bidding statute that has previously been approved by the Commissioners Court. The Auditor or designated staff will present the bids to the Commissioners Court for consideration. Authority to accept or reject the recommendation of the Auditor's Office lies exclusively with the Commissioners Court. The Auditor's Office will verify budget authorization.

- **CATEGORY V - CREDIT CARD PURCHASES**

Leon County has arranged for credit cards to be used for the following purposes:

1. **Travel** – County credit cards may be used for lodging, forms of transportation or conference registration (for extenuating circumstances only) with prior approval from the Auditor's office. County credit cards are NOT to be used for food or personal items. Cards shall be requested, in writing (requisition), in advance and obtained from the County Auditor's office by the employee traveling. Cards shall be returned, along with all itemized receipts at the immediate conclusion of county travel.
2. **Credit Card** - Seminars and Training – Seminar and training reservations ONLY where purchase orders are not accepted.
3. **County fuel cards** shall be used to purchase fuel and minor repair items for county owned vehicles ONLY, with the exception of County Commissioners and County Sheriff who use their personal vehicles for county business. Each fuel credit card will be assigned to a specific county vehicle and is to be used exclusively for that vehicle while

on official county business. The use of the fuel credit card shall be restricted to the purchase of fuel for official county business ONLY for all individuals.

All other employees will receive mileage when personal vehicles are used for county business and a county vehicle is not available to them. State mileage rate is defined as all expenses associated with the use of the employee's vehicle such as gas, maintenance, repairs, and insurance. These payments are not meant to cover the entire cost of owning/operating an employee's vehicle but rather the portion of expenses incurred during work related driving.

The credit card may be used for County purchases from vendors not accepting purchase orders ONLY when no other vendor is available. This is not limited to travel related items.

No Purchasing Staff employee may issue a Purchase Order to a supplier either verbally or in writing that varies from the requirements of the purchasing categories listed above unless the Purchasing Staff employee has obtained a waiver from his/her supervisor as set forth in the next paragraph.

#### **6.7 Waiver of Procurement Category Requirements**

The Auditor, at his/her discretion may, depending on the circumstances surrounding a request, authorize a waiver of all of the procurement category requirements, unless required differently under State law. The Auditor's designated staff similarly authorize a waiver of one or more of the procurement category requirements up to \$50,000. But it is anticipated that such authorization will be granted on limited occasions due to special circumstances such as an emergency or unforeseeable circumstances.

### **Chapter Seven: Competitive Bidding Requirements**

#### **7.1 Reason for Competitive Bidding**

Competitive bidding exists for good reason. Competitive bidding requires preparation of specifications against which bidders may bid, due advertisement of the intention of a county to receive bids and giving everyone an opportunity to bid. It contemplates bidding on the same undertaking upon each of the same material items covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality, that each bidder bid upon the same terms and conditions involved in all the items and parts of the contract, and that the proposal specify as to all bids the same or substantially similar specifications. Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests and benefit of the taxpayers and property owners. There can be no competitive bidding in a legal sense where the terms of the letting of the contract prevent or restrict competition, favor a contractor or material man, or increase the cost of the work of the materials or other items going into the project

#### **7.2 Statutory Requirements for Competitive Bidding**

Counties are generally required under the County Purchasing Act to receive bids by the competitive bidding process on a contract for services, equipment, goods, or other tangible or intangible property including insurance and high technology that are

reasonably expected to exceed \$50,000 annually. But it is also within the discretion and authority of the Commissioners Court to seek competitive bids even though under the circumstances the statutes do not require competitive bidding.

The Auditor's Office will assist any other Department with the preparation of specifications against which bidders may bid. But the final approval of the specifications will be subject to Commissioners Court approval. It is the intent of the Auditor's Office that the specifications:

- use intelligent and concise statements that serve the purpose of apprising potential bidders of exactly what Leon County wants but not be so specific as to unnecessarily limit competition;
- be definitive enough to place all bidders on an equal footing;
- not contain any limiting provisions unless such limitations are for a legitimate purpose; and
- not unreasonably narrow the field of potential bidders.

This does not preclude the Auditor's Office from adopting conditional or alternative specifications so long as all bids received may be compared to one another.

Specifications that are ambiguous and leave to speculation or conjecture as to what is to be bid is not competitive bidding.

It is incumbent upon prospective bidders to thoroughly review all requests for competitive bidding in order to thoroughly familiarize themselves with the specifications and requirements of the request.

The Auditor's Office will advertise the request for competitive bids in accordance with the terms of the County Purchasing Act. The advertisement will be placed in a newspaper of general circulation in Leon County. In addition, depending on the request being made, additional sources of advertisement, as determined necessary or prudent by the Commissioners Court will be utilized. For example, large or highly desirable tracts of real estate may be advertised on-line and in surrounding Counties.

Bids may be submitted by postal mail or hand delivered to the Auditor's Office. Bids will not be accepted by fax or electronic mail. Bids must be received, and time stamped by Auditor's Office prior to the specified date and time on the bid notice. Late bids will not be accepted and will be returned unopened. Only the time designated by the "time stamp" issued by the Auditor's Office will determine whether the bid was received at the proper time.

Competitive bids will be opened in the Auditor's Office conference room, unless otherwise state within the IFB, RFP or RFQ. If available, the County Auditor and a representative from the department that will be the primary end user of the goods or services being bid upon will attend the bid opening. Vendors are encouraged to attend. All bids are read aloud and lump sum and/or unit pricing for each bid is recorded on bid tabulation forms. In the case of conflicting written words and figures, the amount stated in written word governs.

Submitted original bids and proposals remain the property of Leon County after official bid openings. Opened bids will be kept on file in the Auditor's Office and available for inspection for anyone desiring to see them. Upon review and evaluation with representatives of the requesting department and such other County employees deemed advisable by the Auditor's Office, the Auditor or designated staff will present the bids to the Commissioners Court. The Commissioners Court will make the final determination in a publicly scheduled meeting as to which bidder will be awarded the contract or whether all bids should be rejected. Agendas for these meetings are posted at the Leon County Courthouse, 130 E. St. Mary, Centerville, TX 75833 or may be found on the County's website which is <http://www.co.leon.tx.us/page/leon.InvitationforBids> and public meeting access is at: <http://www.co.leon.tx.us/page/leon.Public.Notices.Calendar>.

The Auditor or designated staff member, at his/her discretion, will attempt to notify all bidders in advance of the time, date, and location of the Commissioners Court meeting. All bidders are encouraged to attend.

The Auditor or designee will not present a bid to the Commissioners Court that is substantially or materially different from the specifications, nor may Leon County negotiate privately with the low bidder. This does not preclude waiving immaterial specifications that are not essential to the contract.

Opened bids will be kept on file in the Auditor's Office and available for inspection for anyone desiring to see them in accordance with the County Purchasing Act and the Public Information Act

### **7.3 Requests for Proposals (RFP) - Multistep Competitive Proposal Procedures**

From time to time, if the Auditor determines that the preparation of detailed specifications would be impractical or involves the purchase of health insurance or high technology items, the Auditor or designee shall notify the Commissioners Court of such determination. Upon a finding by the Commissioners Court that it is impracticable to prepare detailed specifications for an item to support the award of a purchase contract, after notification of such determination by the Auditor or designee, the Auditor may use the multistep competitive proposal procedure provided by Local Government Code §262.0295. In addition, the County may utilize requests for proposals in accordance with Section 262.030 of the Local Government Code. Should this method of bidding be utilized, there will be a public notice of a Request for Proposal, commonly called an "RFP" that solicits quotations from vendors. The Auditor's Office will assist any other department with the preparation of the RFP, but the final draft is subject to approval by the Commissioners Court. In addition, the Auditor will recommend to the Commissioners Court whether to appoint an evaluation committee that may include one member of the Commissioners Court, and, if so, which other County employees should be made part of the evaluation. Proposals without a dollar bid may be turned in. Afterwards, bids with prices may be requested by Leon County.

The Auditor's Office will advertise as required in a newspaper of general circulation in Leon County per statutory requirements. It is incumbent upon prospective bidders to thoroughly review all RFP information in order to thoroughly familiarize themselves with the specifications and requirements of the request.

Proposals may be submitted by postal mail or hand delivered to the Auditor's Office. Proposals will not be accepted by fax or electronic mail. Proposals must be received, and time stamped by the Auditor's Office prior to the specified date and time on the bid notice. Late proposals will not be accepted and will be returned. Only the time designated by the "time stamp" issued by the Auditor's Office will determine whether the bid was received at the proper time. Proposals will be opened in a public forum on the date and time specified in the presence of a representative of the County Auditor's Office and, if available, a representative of the requesting department. Requests for Proposals and other Competitive Sealed Proposals are opened at the specified times and only the names of the proposers are read aloud and recorded unless the instructions provide otherwise or at the discretion of the Auditor. Submitted original bids/proposals shall remain the property of Leon County after official bid openings.

The Auditor or designated staff member and the evaluation committee will, after a preliminary evaluation of the proposals, notify the Commissioners Court of those proposals that, as of the date of the notification, appear to be of the best value and most advantageous to Leon County. In the case of conflicting written words and figures, the amount stated in written word governs. In addition, the Auditor or designee will request Commissioners Court authorization to negotiate with those who submit the leading proposals. Upon finalization of negotiations, the Auditor or designee shall present the proposals to the Commissioners Court for consideration of awarding the contract to the proposal determined to have the lowest evaluated offer resulting from negotiation, or specify that additional negotiations take place, or reject all proposals.

The Commissioners' Court will make their decision at a publicly scheduled meeting. Agendas for these meetings are posted at the Leon County Courthouse, 130 E. St. Mary, Centerville, Texas 75833 or may be found on the County's website at <http://www.co.leon.tx.us/page/leon.InvitationforBids> and public meeting access is at: <http://www.co.leon.tx.us/page/leon.Public.Notices.Calendar>.

The Auditor or designated staff member, at his/her discretion, will attempt to notify all bidders in advance of the time, date and location of the Commissioners Court Meeting will be considered. All proposers are encouraged to attend.

All proposals that have been submitted shall, subject to the both the prohibitions contained within the County Purchasing Act (e.g., trade secrets and confidential information contained in the proposals and identified as such) and the terms and provisions of the Texas Public Information Act, be available and open for public inspection but only after the final contract is awarded and executed.

#### **7.4 Solicitation Specifications**

Formal solicitations are used when required under the County Purchasing Act, and thus generally for contracts anticipated to be greater than \$100,000.00 and may also be used for contracts anticipated to cost less than \$100,000.00. Formal solicitations include General Provisions and Special Provisions (which may also be called Specifications).

Additional special provision sections may be included in the solicitations as necessary. General Provisions generally serve as the minimum requirements in procurement solicitations. Special Provisions are included to further define the services and/or

goods sought and in clarifying the contracting opportunity and may, in some instances, supersede the General Provisions.

The primary purpose of any specification is to provide prospective vendors with criteria about the minimum standards acceptable for goods and/or services; the goal of the specifications, general and special, is to promote competitive bidding by providing the means to make an award to the lowest and best bid from a responsible bidder in conformity with State and/or Federal law, as applicable.

Provisions within the General Provisions address a variety of contractual terms and requirements and may be modified at the discretion of the Auditor without requiring an amendment to this Purchasing Policies and Procedures Manual.

Finally, different funding sources utilized by the Leon County Commissioner's Court in a given procurement may require different mandates than what are prescribed herein and may be mentioned in other sections of this Purchasing Policies and Procedures Manual. It is imperative that any vendor seeking to do business with Leon County, familiarize themselves with the guidelines and statutes that govern competitive bidding prior to submitting offers.

#### **7.5 Construction Contractor Oversight**

Leon County exercises regular observation and evaluation of construction projects as they proceed. Contractors are required to participate in a series of regular project meetings for the benefit of the Owner and the project. Contractual agreements between Leon County and architects and engineers spell out the duties of contract administration and observation the professional firms are responsible for. Specification sections within the construction documents set out the roles of Construction Manager and regular project meetings.

The following processes are adhered to but not limited to the following when providing oversight:

- Contractor agreements contain guidelines setting the compliance with submittals, performance, meetings, and "inspections" of the work.
- Projects are reviewed by the in-house Construction Manager, Architect, or Engineer in addition to the design professional hired for that project prior to authorization for any payment to the contractor for services in the scope of the Contractor's agreement.
- Leon County designated staff makes regular visits (not less than weekly) to construction projects to assure the work proceeds in accordance with agreements. This is supplemental to project observation services included in our agreement with design professionals.
- Design professionals are required to:
  - Review shop, laboratory, and mill tests of material and equipment and promptly report any deficiencies to the County;
  - Review submittals and shop drawings for compliance with original concepts and specifications;
  - Prepare meeting notes;
  - Assist the County in performance tests required by the specifications;
  - Conduct inspections to determine date or dates of substantial completion.

## **Chapter Eight: General Guidelines Relating to Competitive Bidding**

### **8.1 Determination of Lowest and Best Bid**

In accordance with Section 262.022(5-a) of the Local Government Code, "Lowest and Best" means a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale.

In accordance with Section 262.030 of the Local Government Code, in requests for proposals the request must specify the relative importance of price and other evaluation factors and the award of contract shall be made to the responsible offeror whose proposal is determined to be the lowest and best evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

In arriving at a determination of notification of the bids to be presented to the Commissioners Court, the Auditor and/or designated staff member and the Evaluation Committee, if one has been appointed, may also consider:

- price;
- the quality of the product or service;
- the adaptability of the product or service to the intended use;
- the ability, experience, integrity, and financial responsibility of the bidder/proposer; and
- such other evaluation criteria that are set forth in the invitation to bid or the RFP.

### **8.2 Unit Price Bids**

Contracts for materials, equipment, supplies and construction of public works may be let on a unit price basis. If it is determined that unit price bids will be utilized the specifications will state the approximate quantities estimated on the best available information the Auditor or designee has at the time of the determination.

### **8.3 Tax Exempt**

Leon County, as a political subdivision of the State of Texas, is tax exempt.

### **8.4 FOB Leon**

All prices associated with all bids and proposals must be FOB (i.e., the price submitted includes all freight and shipping charges) to the shipping destination in Leon County.

### **8.5 Sole Bids/Identical Bids**

On occasion, when a request for bids or a RFP is issued, the County may receive only one response. Should this occur, the Auditor will attempt to determine the reason(s) behind the lack of interest from the public and whether there might be greater interest generated were the competitive bidding process to begin anew. Based on his/her findings, the Auditor or designee will notify the Commissioners Court of the single bid and the Commissioners Court will decide whether to accept the bid/proposal or reject it and order the process to begin again.

If two responsible bidders submit the lowest and best bid with equal terms and conditions, the Commissioners Court shall decide between the two by drawing lots in a manner prescribed by the County Judge.

### **8.6 Exceptions to Competitive Bidding and Sole Source Items**

The County Purchasing Act gives the Commissioners Court the discretion to grant an exemption from competitive bidding, e.g., in cases of emergency or public calamity, personal or professional services, land or right of way acquisitions, etc. Numerous exceptions are permitted as set forth in the County Purchasing Act or, if applicable, in Section 271.056 of the Local Government Code. In addition, competitive bidding is not required in the event there is only supplier who furnishes the item.

The Auditor or designee will, upon request of a requesting department accompanied with written documentation, make a preliminary determination whether an exception or a sole source vendor exists. If, in the opinion of the Auditor the request is legitimate, the Auditor or designee will notify the Commissioners Court and the Commissioners Court will decide whether to grant the exemption and to purchase the item from the sole source. The final decision as to whether or not to grant the exemption or to purchase from a sole source or other permitted exemption lies with the Commissioners Court.

### **8.7 Change Orders**

If it becomes necessary to make changes in plans, specifications, or proposals after a contract has been made or if becomes necessary to increase or decrease the quantity of items purchased, the Commissioners Court may make the changes as long as any increase in the total contract price can be made from available funds. Such changes will be made via a change order.

All requests for a change order must be submitted by the requesting department or the vendor to the Auditor's Office for review and recommendation to the Commissioners Court. However, in accordance with Section 262.031 of the Local Government Code, the original contract price may not be increased by more than 25% unless the change order is necessary to comply with a federal or state statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made. Also, the original contract price may not be decreased by 18% or more without the consent of the contractor.

## **Chapter Nine: Federally Funded Contracts Procurement Standards and Associated Matters**

The County of Leon follows the procurement standards in 2 CFR 200.317 – 2CFR 200.327 and Appendix II to Part 200 for procurement actions to be funded with Federal funds. All attempts are made to adhere to these policies and procedures and updates are made as needed. The entirety of the language found in 2 CFR 200.317 – 2 CFR 200.327 may not be applicable in all instances, programs, and/or situations. This document contains the most current 2 CFR 200.317 – 2 CFR 200.327 language available at the adoption of these policies and procedures.

## **9.1 General Procurement Standards**

Depending on the specific funding source of the procurement request, solicitation efforts by Leon County utilizing Federal funding are subject to additional procurement standards. 2 CFR PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS, and 24 CFR 85.36 - PROCUREMENT (U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) affect or may affect procurement requirements and mandate various contract terms. The foregoing listing is not exhaustive.

Special Note: As well relevant procurement standards on previous disaster recovery assistance projects may be found at 44 C.F.R. 13.36 (a)-(i) (States, local, and tribal governments), or other sources.

Procedures for Federally funded solicitations must include all required Federal clauses and language.

## **9.2 Sections 2 C.F.R. §§ 200.317- 200.326.**

These sections impose requirements for federally funded contracts across a broad range of granting agencies. The County, a non-Federal entity and generally a subrecipient in these grant programs, is subject to these requirements. Sections 200.318 through 200.326, as such regulations exist on the date of the Auditor's Office adoption of these policies, follow:

### **§200.317 Procurements by states.**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

### **§200.318 General procurement standards.**

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§200.317 through 200.327.
- (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. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
  - (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 §200.214.
  - (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.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

**§200.319 Competition.**

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.
- (b) 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.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

**§200.320 Methods of procurement to be followed.**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
  - (1) Micro-purchases
    - (i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the

- maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
  - (iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) (<https://www.ecfr.gov/current/title-48/chapter-1/subchapter-A/part-2/subpart-2.1>) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
  - (iv) Non-Federal entity increases to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
    - (a) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
    - (b) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
    - (c) For public institutions, a higher threshold consistent with State law.
      - (v) Non-Federal entity increases to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
  - (2) Small purchases
    - (i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be

- obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
- (ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
- (1) Sealed bids. A procurement method in which 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 bids method is the preferred method for procuring construction if the conditions meet the following criterion:
    - (i) In order for sealed bidding to be feasible, the following conditions should be present:
      - (a) A complete, adequate, and realistic specification or purchase description is available;
      - (b) Two or more responsible bidders are willing and able to compete effectively for the business; and
      - (c) 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.
        - (ii) If sealed bids are used, the following requirements apply:
          - (a) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
          - (b) 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;
          - (c) 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;
          - (d) 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

- (e) Any or all bids may be rejected if there is a sound documented reason.
  - (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
    - (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
    - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
    - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
    - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated, and the most qualified offeror 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 that are a potential source to perform the proposed effort.
- (d) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
  - (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
  - (2) The item is available only from a single source;
  - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
  - (5) 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 (b)(1) through (5) of this section.3

**§200.322 Domestic preferences for procurements.**

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**§200.323 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.

**§200.324 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 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.

**§200.325 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.

#### **§200.326 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 requirements 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.

#### **§200.327 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.

### **9.3 2 C.F.R. Part 200, Appendix II**

#### **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, 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 affected 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 § 200.323\*

- (k) See § 200.216\*\*
- (l) See § 200.322\*\*\*

**\*§ 200.323 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.

**\*\*§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

- (a) Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:
  - (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan,

grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

- (c) See Public Law 115-232, section 889 for additional information.
- (d) See also § 200.471.

**\*\*\*§ 200.322 Domestic preferences for procurements.**

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**9.4 Additional Contract Requirements Remedies**

- (a) Standard: Contracts for more than the simplified acquisition threshold (\$150,000) 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. See 2 C.F.R. Part 200, Appendix II, A.
- (b) Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

**Termination for Cause and Convenience.**

- (a) 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 affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.
- (b) Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

**Equal Employment Opportunity.**

- (a) Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. 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 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

(b) Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(c) Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

(d) The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause: "During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this

- section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

**Davis Bacon Act and Copeland Anti-Kickback Act.**

- (a) Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- (b) 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, D.

- (c) 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.
- (d) 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.
- (e) In contracts subject to the Davis-Bacon Act, 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 at 29 C.F.R. 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 Copeland Anti-Kickback 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 FEMA.
- (f) The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act." However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

**"Compliance with the Copeland "Anti-Kickback" Act.**

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

**Contract Work Hours and Safety Standards Act.**

- (a) Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- (b) Where applicable (see 40 U.S.C. § 3701), 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 at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, E.

- (c) Under 40 U.S.C. § 3702, 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.
- (d) 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.
- (e) The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act: "Compliance with the Contract Work Hours and Safety Standards Act"
  - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
  - (3) Withholding for unpaid wages and liquidated damages. The write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

**Rights to Inventions Made Under a Contract or Agreement.**

- (a) Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households - Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."
- (b) If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. §401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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 FEMA. See 2 C.F.R. Part 200, Appendix II, F.
- (c) The regulation at 37 C.F.R. §401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

**Clean Air Act and the Federal Water Pollution Control Act.**

Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor 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 FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, 11 G.

- (a) The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000: "Clean Air Act"
  - (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
  - (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government)

will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **"Federal Water Pollution Control Act"**

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA."

#### **Debarment and Suspension.**

- (a) **Applicability:** The federal debarment and suspension provisions apply to all federal granting agencies.
- (b) Non -federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).
- (c) These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, if H; and Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (POAT) Field Manual Chapter IV, 6.d, and Appendix C, 2 [hereinafter POAT Supplement]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; POAT Supplement, Chapter IV, 6.d and Appendix C,
- (d) In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although

"covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipient.

- (e) Specifically, a covered transaction includes the following contracts for goods or services:
  - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - (2) The contract requires the approval of FEMA, regardless of amount.
  - (3) The contract is for federally-required audit services.
  - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- (f) The following provides a debarment and suspension clause. It incorporates an optional method of assurances that contractors are not excluded or disqualified:

### **Suspension and Debarment**

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

### **Byrd Anti-Lobbying Amendment.**

- (a) Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- (b) Contractors that apply or bid for an award of \$100,000 or more must file the required certification.

See 2 C.F.R. Part 200, Appendix II, 11 I; 44 C.F.R. Part 18; POAT Supplement, Chapter IV, 6.c; Appendix C, 4.

- (c) 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. See PDAT Supplement, Chapter IV, 6.c and Appendix C, 4.
- (d) The following provides a Byrd Anti-Lobbying contract clause: "Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors who apply or bid for an award of \$100,000 or more shall 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 31U.S.C. §1352. Each tier shall 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 recipient."

**Procurement of Recovered Materials**

- (a) Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- (b) 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, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, J; 2 C.F.R. § 200.322; PDAT Supplement, Chapter V, 7.
- (c) The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. 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 by 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.
- (d) The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:
  - (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
    - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
    - (ii) Meeting contract performance requirements; or
    - (iii) At a reasonable price.

- (2) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>."

## **9.5 Additional FEMA Requirements**

- (a) The Uniform Rules authorize FEMA to require additional provisions for nonfederal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
  - (b) Changes. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.
  - (c) Access to Records. All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, XXVI (2013).
  - (d) The following provides a contract clause regarding access to records:

"Access to Records. The following access to records requirements apply to this contract:

    - (1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
    - (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
    - (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract."

## **DHS Seal, Logo, and Flags**

- (a) All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, XXV (2013).

- (b) The following provides a contract clause regarding DHS Seal, Logo, and Flags: "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval".

#### **Compliance with Federal Law, Regulations, and Executive Orders**

- (a) All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- (b) The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: "This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives."

#### **No Obligation by Federal Government**

- (a) The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- (b) The following provides a contract clause regarding no obligation by the Federal Government: "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

- (a) The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- (b) The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: "The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

### **9.6 Appendix A, 44 C.F.R. Part 18- Certification Regarding Lobbying**

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000). The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.
- Signature of Contractor's Authorized Official  
Name and Title of Contractor's Authorized Official Date

**9.7 Requirements on FEMA funded projects - 44 CFR 13.36 - Procurement**

- (a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.
- (b) Procurement standards.
  - (1) Grantees and subgrantees 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.
  - (2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
  - (3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    - (i) The employee, officer, or agent,

- (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
- (4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase 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.
  - (5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
  - (6) Grantees and subgrantees are 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.
  - (7) Grantees and subgrantees are 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.
  - (8) Grantees and subgrantees will make awards 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.
  - (9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a 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.
  - (10) Grantees and subgrantees will use time and material type contracts only:
    - (i) After a determination that no other contract is suitable, and

- (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.
- (11) Grantees and subgrantees alone will 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 grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
- (12) 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. A protester must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:
  - (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
  - (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.
- (c) Competition
  - (13) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 13.36. Some of the situations considered to be restrictive of competition include but are not limited to:
    - (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
    - (ii) Requiring unnecessary experience and excessive bonding,
    - (iii) Noncompetitive pricing practices between firms or between affiliated companies,
    - (iv) Noncompetitive awards to consultants that are on retainer contracts,
    - (v) Organizational conflicts of interest,
    - (vi) 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, and
    - (vii) Any arbitrary action in the procurement process.

Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local 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/EI 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.

- (14) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
  - (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall 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 equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
  - (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (15) Grantees and subgrantees will 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, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.
- (d) Methods of procurement to be followed
  - (1) 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 fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
  - (2) 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 § 13.36(d)(2) (i) apply.
    - (i) In order for sealed bidding to be feasible, the following conditions should be present:
      - (A) A complete, adequate, and realistic specification or description is available;
      - (B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

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- (C) 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.
  - (ii) If sealed bids are used, the following requirements apply:
    - (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
    - (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
    - (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
    - (D) 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 shall 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
    - (E) Any or all bids may be rejected if there is a sound documented reason.
- (3) 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:
  - (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
  - (ii) Proposals will be solicited from an adequate number of qualified sources;
  - (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
  - (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
  - (v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/EI 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.

- (4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
  - (i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
    - (A) The item is available only from a single source;
    - (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - (C) The awarding agency authorizes noncompetitive proposals;or
    - (D) After solicitation of a number of sources, competition is determined inadequate.
  - (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
  - (iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.
- (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
  - (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
  - (2) Affirmative steps shall include:
    - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
  - (iv) Establishing delivery schedules, where the requirement permits, which encourages participation by small and minority business, and women's business enterprises;
  - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
  - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.
- (f) Contract cost and price.
  - (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract

modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

- (2) Grantees and subgrantees 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 cost analysis is performed. To establish a fair and reasonable profit, consideration will 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.
  - (3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 13.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
  - (4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
- (g) Awarding agency review.
- (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
  - (2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
    - (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
    - (ii) 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; or

- (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
  - (iv) The proposed award 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
  - (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
- (3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
- (i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
  - (ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.
- (h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified.
  - (2) 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.
  - (3) 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
- (i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention,

suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
- (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)
- (3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
- (4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
- (7) Notice of awarding agency requirements and regulations pertaining to reporting.
- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract
- (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

- (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94- 163, 89 Stat. 871). [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr.19, 1995]

**9.8 Procurement Standards on U.S. Department of Housing and Urban Development (HUD) 24 CFR 85.36 - Procurement Standards**

- (a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and sub grantees will follow paragraphs (b) through(i) in this section.
- (b) Procurement standards.
  - (1) Grantees and sub grantees 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.
  - (2) Grantees and sub grantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
  - (3) Grantees and sub grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or sub grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    - (i) The employee, officer, or agent,
    - (ii) Any member of his immediate family,
    - (iii) His or her partner, or
    - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or sub grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements. Grantee and sub grantees may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

- (4) Grantee and sub grantee procedures will provide for a review of proposed procurements to avoid purchase 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.
- (5) To foster greater economy and efficiency, grantees and sub grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
- (6) Grantees and sub grantees are 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.
- (7) Grantees and sub grantees are 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.
- (8) Grantees and sub grantees will make awards 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.
- (9) Grantees and sub grantees will maintain records sufficient to detail the significant history of a 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.
- (10) Grantees and sub grantees will use time and material type contracts only:
  - (i) After a determination that no other contract is suitable, and
  - (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.
- (11) Grantees and sub grantees alone will 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 grantee or sub grantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or sub grantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
- (12) Grantees and sub grantees 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. A protester must exhaust all administrative remedies with the grantee and sub grantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

- (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
  - (ii) Violations of the grantee's or sub grantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or sub grantee.
- (c) Competition.
  - (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:
    - (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
    - (ii) Requiring unnecessary experience and excessive bonding,
    - (iii) Noncompetitive pricing practices between firms or between affiliated companies,
    - (iv) Noncompetitive awards to consultants that are on retainer contracts,
    - (v) Organizational conflicts of interest,
    - (vi) 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, and
    - (vii) Any arbitrary action in the procurement process.
  - (2) Grantees and sub grantees will conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local 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.
  - (3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
    - (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall 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 equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features

- of the named brand which must be met by offerors shall be clearly stated; and
    - (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
  - (4) Grantees and sub grantees will ensure that all pre-qualified 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, grantees and sub grantees will not preclude potential bidders from qualifying during the solicitation period.
- (d) Methods of procurement to be followed:
  - (1) 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 fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.
  - (2) 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 85.36(d)(2)(i) apply.
    - (i) In order for sealed bidding to be feasible, the following conditions should be present:
      - (A) A complete, adequate, and realistic specification or purchase description is available;
      - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and (C) 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.
    - (ii) If sealed bids are used, the following requirements apply:
      - (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
      - (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
      - (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
      - (D) 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 shall 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

- (E) Any or all bids may be rejected if there is a sound documented reason.

(3) 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:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources;
- (iii) Grantees and sub grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (v) Grantees and sub grantees 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.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

- (i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- (C) The awarding agency authorizes noncompetitive proposals;

or

- (D) After solicitation of a number of sources, competition is determined inadequate.

- (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

- (iii) Grantees and sub grantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.
- (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
  - (1) The grantee and sub grantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
  - (2) Affirmative steps shall include:
    - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
    - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
    - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
    - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.
- (f) Contract Cost and Price
  - (1) Grantee and sub grantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and the sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price on a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
  - (2) Grantees and subgrantees 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 cost analysis is performed. To establish a fair and reasonable profit, consideration will 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.
- (3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (24 C.F.R. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
  - (4) The cost plus a percentage of cost and percentage of contracting shall not be used.
- (g) Awarding agency review.
- (1) Grantees and sub grantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or sub grantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
  - (2) Grantees and sub grantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:
    - (i) A grantee's or sub grantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
    - (ii) 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; or
    - (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a brand name product; or
    - (iv) The proposed award 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
    - (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
  - (3) A grantee or sub grantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
    - (i) A grantee or sub grantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
    - (ii) A grantee or sub grantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee

or sub grantee that it is complying with these standards. A grantee or sub grantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or sub grantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall 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 his bid, execute such contractual documents as may be required within the time specified.
- (2) 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.
- (3) 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.

(i) Contract provisions.

A grantee's and sub grantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
- (2) Termination for cause and for convenience by the grantee or sub grantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)
- (3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees)
- (4) Compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair).
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part SJ).

- (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)
  - (7) Notice of awarding agency requirements and regulations pertaining to reporting.
  - (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
  - (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
  - (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
  - (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
  - (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
  - (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94- 163).

## **Chapter Ten: Professional and Consulting Services**

### **10.1 Professional Services Procurement Act - Contracts Not Competitively Bid**

In addition to the Commissioners Court's discretion to grant an exemption to the requirement of competitive bidding due to the professional services exemption under the County Purchasing Act, the Professional Services Procurement Act prohibits a county from employing professional services such as licensed physicians, architects, certified public accountants, and registered engineers on the basis of competitive bids submitted for the contract or for the services. Thus, there are two kinds of professional services - 1.) those listed within the Professional Services Procurement Act (which are identified below), and 2.) those professional services that may or may not be in the list below, but that the Commissioners Court finds constitute professional services in compliance with the County Purchasing Act.

Under the Professional Services Procurement Act, for the services covered under that Act, the County shall make the selection and award of contract:

- (1) on the basis of demonstrated competence and qualifications to perform the services; and
- (2) for a fair and reasonable price.

The Professional Services Procurement Act is codified at Chapter 2254 of the Texas Government Code.

Professional services under the Professional Services Procurement Act are defined at Subsection 2254.002(2) of the Government Code, and mean services:

- (A) within the scope of the practice, as defined by state law, of:
  - (i) accounting;
  - (ii) architecture;
  - (iii) landscape architecture;
  - (iv) land surveying;
  - (v) medicine;
  - (vi) optometry;
  - (vii) professional engineering;
  - (viii) real estate appraising; or
  - (ix) professional nursing; or
- (B) provided in connection with the professional employment or practice of a person who is licensed or registered as:
  - (i) a certified public accountant;
  - (ii) an architect;
  - (iii) a landscape architect;
  - (iv) a land surveyor;
  - (v) a physician, including a surgeon;
  - (vi) an optometrist;
  - (vii) a professional engineer;
  - (viii) a state certified or state licensed real estate appraiser; or
  - (ix) a registered nurse.

In accordance with Section 2254.004 of the Government Code, in procuring architectural, engineering, or land surveying services, a governmental entity shall:

- (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
- (2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the governmental entity shall:

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider; and
- (3) attempt to negotiate a contract with that provider at a fair and reasonable price.

The governmental entity shall continue this process to select and negotiate with providers until a contract is entered into.

The professional fees under the contract may not exceed any maximum provided by law.

Any contract awarded a professional who is listed as such under the Professional Services Procurement Act on the basis of competitive bids is void against public policy. Accordingly, it is the policy of the Auditor that contracts that are entered into that require professional services are negotiated by the end user, County Legal, and, if requested, the Auditor.

## **10.2 Discretionary Exemption under the County Purchasing Act**

The County Purchasing Act gives the Commissioners Court the discretion to grant an exemption by order from competitive bidding for professional services. This exemption is located at Section 262.024(a)(4) of the Texas Local Government Code.

## **10.3 Federal Requirements**

Notwithstanding the foregoing Sections 10.1 and 10.2, contracts funded through Federal grants generally require the contract to be procured through competitive bidding and the only exception from such requirements applies to the services of an architect or an engineer acting within their field. The County, a non-federal entity and generally a subrecipient, may be under different requirements than an agency of the State of Texas pertaining to professional services and the requirement to procure such services, other than architects/engineers acting within their field, by competitive bidding, rather than through request for qualifications.

# **Chapter Eleven: Acquisition, Transfer and Disposal of County Owned Fixed Assets**

## **11.1 Types of Personal Property Assets**

**Fixed Asset:** Tangible property (something one can touch or see) which is expected to be useful to the County for a time greater than one (1) year and has a cost of at least \$5,000.00. Examples of fixed assets include machinery, automotive vehicles, equipment, buildings, high technology items and improvements to buildings.

Fixed Asset Maintenance Improvement (FAMI) - Normal maintenance and repair is not considered a fixed asset. But, if the maintenance or repair is substantial and drastically extends the life of the asset, it should be capitalized as a FAMI.

Lost or stolen Assets - those fixed assets that are missing and considered unrecoverable.

Salvage Property - personal property that, because of use, time, or accident, is so worn, damaged, or consumed, it has no value for the purpose for which it was originally intended but does otherwise have value.

Surplus Property - personal property, other than salvage, not currently useful, but considered to have future usefulness, either as originally intended or otherwise.

## **11.2 Acquisitions of New Asset**

**Purchases:** The requesting department must submit a purchase requisition to the Auditor's Office for processing. The requisition request must include quantity, unit cost, unit measure, product description, specifications, requested delivery date, and delivery instructions. The department must notify the Auditor's Office upon receipt of a fixed asset and forward all associated documentation to the Auditor or designee for processing. Prior to placing the asset in service, the custodial department must properly tag and document receipt of the asset.

**Donations:** The person/ entity donating the asset must provide documentation of ownership and submit a written statement of donation to the Auditor's Office. All donations must be approved by the Commissioners Court before being placed in the County's inventory.

**Seizures:** On occasion, Leon County law enforcement agencies acquire automobiles, boats or other items that ultimately become Fixed Assets through what is commonly called the U.S. Department of Justice Federally Forfeited Property Program. All such assets must, upon acceptance by the Commissioners Court be inserted into the FA module by the Auditor's Office or designee as a county owned fixed asset.

## **11.3 Asset Movement and Transfer**

**Transfer of Assets:** The Auditor is authorized by the Commissioners Court to transfer supplies, materials, and equipment among the various County departments. Fixed asset transfers from location to location require the notification of the Auditor's Office who will perform the update of location in the financial system. Custodial transfers of assets from one department/division to another must be documented with Purchasing form FA-02. Transfer which must be sent to the Auditor's Office. The transfer will be completed and filed with the asset record within 5 business days.

## **11.4 Asset Disposal**

**Salvage and surplus assets and property:** Salvage Property or Surplus Property must be reported on Form FA-03, Asset Disposal Report and forwarded to the Auditor's Office for instructions on the proper disposal method and for documentation purposes. Actual disposal of assets will be accomplished through a disposal method as prescribed by the Auditor upon approval by the Commissioners Court. These methods may include but not be limited to local public auctions, internet (online) auctions, donations to civic or charitable organizations, and trade-in. County employees are eligible to purchase Salvage Property or Surplus Property. Contact the Auditor's Office for details.

**Lost or Stolen Fixed Assets:** Lost assets must be reported immediately to the Auditor by the Elected/ Appointed Official, or the Department Head. Reports of lost assets must be immediately made on Form FA-03, Asset Disposal Report by the Elected or

Appointed Official or Department Head and sent to the Auditor's Office. Reports of theft of Fixed Assets must be immediately made on Form FA-03, Asset Disposal Report by the Elected or Appointed Official or Department Head and sent to the Auditor's Office who will update the fixed asset status. In addition, the Elected Official or Appointed Official or the Department Head must report the theft to the proper law enforcement agency and submit a copy of the offense report to the Auditor's Office. It will be removed from the department's asset custody report by the Auditor's Office after the proper documentation is received and filed by Commissioners Court.

## **Chapter Twelve: Control Relating to County Owned Assets**

### **12.1 General Principles**

Since all assets belonging to Leon County are publicly and not privately owned, it is necessary to provide a basic understanding of the policies associated with County owned assets. Essentially, all Elected and Appointed Officials, Department Heads, and employees share in the responsibility of accounting for, using, and properly maintaining all county buildings, equipment, and furnishings.

As previously stated in the opening section of this Policy and Procedures Manual, and in accordance with Section 262.011 (i) of the Local Government Code, the Auditor is charged with maintaining an inventory of Leon County property that is filed annually with the Leon County Auditor. In addition, in accordance with Section 262.011 (j) of the Local Government Code, all surplus property must be transferred to the Auditor when not actually needed by any Leon County department.

In order to assist in the performance of duties and maintaining accurate inventory records the Auditor's Office is responsible for keeping accurate records of all County owned assets including their acquisition, transfer, and disposition. Cooperation from all County employees is necessary to accurately perform these duties.

### **12.2 Annual Inventory**

The Auditor or designee will conduct on-site inventories all County inventory once a year. All departments are required to assist the Auditor or designee in the documentation of all Fixed Assets. The County has implemented the Fixed Asset module of the financial system to facilitate documenting the acquisition, custodial use, financial reporting, and disposition of all fixed assets.

### **12.3 Asset Control of Each Department**

Each Elected and Appointed Official and Department Head has the primary responsibility for ensuring protective custody, and accounting for all county fixed assets assigned to their department. Each Elected and Appointed Official and Department Head should designate an employee to serve as the Asset Custodians for their department, by completing (and having their employee complete) an FA-08, Dept. Signature Sheet. The employee so designated is charged with performing all duties relating to asset management of all fixed assets assigned to their department including but not limited to the execution of Forms FA-03 and FA-04. The Asset Custodian for the department should note any discrepancies between the actual inventory and the

inventory record on the asset custody report. Some examples of discrepancies include corrections to description, location, serial numbers, etc. Although it is the responsibility of each Elected and Appointed Official and Department Head to annually account for all County owned assets assigned to their department, the County Auditor's Office may "spot check," at such times and on such occasions as they deem reasonable or necessary.

#### **12.4 Documentation Procedures for Movement of Fixed Assets**

The following documentation procedures are designed to facilitate both reporting accuracy and technology support for Fixed Assets other than Information Technology Fixed Assets. The procedures are:

- a. Auditor or designee must update the financial system within 5 business days of the actual equipment acquisition, transfer, or disposition. All information required to the financial system must be filed with the Auditor's Office and made accessible to the County Auditor for auditing purposes upon request.
- b. In the case of Lost Assets, a Form FA-03, Asset Disposal Report must immediately be completed, and copies given to the Auditor's Office.
- c. An online asset custody verification process is initiated annually to all departments. This form is generated from fixed asset records stored in the Fixed Asset (FA) module of the county's financial system. It includes all inventoried fixed assets charged to the protective custody of each department. The department head or asset custodian shall examine the form for accuracy, execute it and return it to the Auditor's Office by the date specified on the email. Supporting documentation on each fixed asset must be attached to the form. Any discrepancy must be noted on the form and reconciled by the Auditor or designee and each the department from which the discrepancy emanates. Upon reconciliation of the form, the Auditor or designee will update the financial system. Only the Auditor or designated staff are authorized to update the fixed asset portion of the financial system.
- d. The transfer of all other fixed property equipment from one Department to another shall be documented on Form FA-02, Asset Transfer Report for Fixed Assets. This form must be signed by both the transferring Department's Asset Custodian and the Auditor (or designee).
- e. The disposition of all other fixed property shall be documented on Form FA-03, Asset Disposal Report. This form must be signed by both the disposing Department's Asset Custodian and the Auditor (or designee).
- f. Only the Auditor has the authority to modify these guidelines.

### **Chapter Thirteen: Travel Policy**

#### **13.1 County's Travel Policy**

Leon County employees authorized to travel must adhere to the County Travel Policy and related procedures and the Travel Expense Reimbursement Procedures, which were approved by the Commissioners Court with the authority to manage placed under the Leon County Auditor.

Failure to adhere to the terms and requirements of the Travel Policy and related procedures may result in payment or reimbursement of travel claims being denied. Any conflict between this Chapter and the Travel Policy/Travel Expense Reimbursement Procedure that became effective on October 12, 2018, the Travel Policy and Travel Expense Reimbursement Procedure effective October 12, 2018, shall control.

### **13.2 Travel Requests**

The Travel Policy and Travel Expense Reimbursement Procedures apply to all employees whose travel expenses are paid from public funds and is subject to oversight and enforcement by the County Auditor. County officials and department heads are responsible for ensuring travel expenditures are valid and appropriate and in conformity with the adopted Travel Policy and related procedures. County officials and department heads should ensure budgeted travel funds are available before authorizing travel for an employee. All travel must be approved by the county official/department head prior to a requisition being placed with the Auditor's Office. All travel requests must include a brief justification for the trip including estimated costs of registration fees, lodging, airfare, mileage, parking, taxi or shuttle use and a per diem.

All requests for reimbursements must be requisitioned from a specified travel account containing adequate travel funds. An approved general ledger account can be obtained from the County Auditor.

**These Policies and Procedures are passed and approved by the County of Leon through the County Commissioners Court on April 27, 2026.**

Byron Ryder

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**Byron Ryder, Leon County Judge**

**Signature:** *Byron Ryder*  
Byron Ryder (May 19, 2026 11:43:25 CDT)

**Email:** bryder@co.leon.tx.us