

# **ECTOR COUNTY**



## **PROCUREMENT POLICIES AND PROCEDURES**

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# I. INTRODUCTION

This policy manual is based on state law as found in the Texas Local Government Code and Federal 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. Any changes in state law and federal law will automatically supersede County Purchasing Policy. Copies of the Texas Local Government Code can be found on the web at <http://www.capitol.state.tx.us>, and 2 C.F.R. 200 Guidelines are located at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>.

Procurement is defined as purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; including all functions that pertain to the acquisition, description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. Procurement is the combined functions of purchasing, inventory control, receiving and inspection, storekeeping, salvage and disposal operations. These policies and procedures are approved and authorized by the Ector County Commissioners' Court, and changes in the contents of this manual shall be made only by the approval of the Ector County Commissioners' Court.

The Ector County Commissioners' Court has adopted a centralized procurement function that provides many benefits:

- It allows for the consolidation of several smaller procurements by individual departments into larger procurements for the entire County, resulting in lower unit prices and savings.
- Vendors and the business community have a single, central link to the County procurement process to facilitate consistent communication and understanding.
- Purchasing personnel accumulate a solid foundation of procurement knowledge and experience about purchasing, marketing trends, pricing, contractual arrangements and vendors. This expertise assists users to define their needs better to save the County money and promotes a more efficient procurement process.
- Centralized expertise puts the procurement processes on a professional footing and inspires public confidence in the actions of the County.

The centralized procurement concept provides the County with an orderly and business-like procedure for procuring goods and/or services for the various departments of the County. Bear in mind that not only is it necessary to procure the proper goods and/or services required by the various activities of the County; review fund accounts; oversee that the goods and/or services are delivered in an orderly, acceptable and timely manner at the awarded prices; but also that the vendor will be promptly paid upon completion of their order or contract.

County procurement procedures are governed by Texas statutes. These statutes, including interpretations of them made by Texas courts, are the ultimate authority on the validity of procurement procedures. ***This manual cannot address every situation***; and when an unusual situation occurs or a difficult legal or factual problem arises, the exact statutory language must be reviewed and analyzed. In every situation, the final authority for County procurement procedures is the law itself.

This manual is intended for the use of Ector County officials and employees and is designed to assist them in complying with the laws governing county procurement policies and procedures. This manual does not create any rights of individuals or entities enforceable against Ector County.

The goal of this written procurement policy is to promote the County's best interest through intelligent action and fair dealings, which will result in obtaining the maximum value for each dollar expended and at the same time conform to the laws of the State of Texas under which the County government must operate.

Lucy Soto, CPPO, CPPB  
Purchasing Agent

## **II. PROCUREMENT POLICY**

### **A. AUTHORITY:**

1. The Ector County Commissioners' Court ("Commissioner's Court") and the Ector County Purchasing Agent ("Purchasing Agent") shall have the authority, responsibilities, and duties as provided in Chapter 262, Local Government Code, with respect to procurement and purchasing by Ector County.
2. The Commissioners Court and Purchasing Agent have the procurement and purchasing authority for Ector County, and are responsible for assuring that procurement and purchasing by Ector County is made and performed in accordance with the provision of Chapter 262, Local Government Code.

### **B. PURCHASING ETHICS:**

1. It is the policy of Ector County to promote and balance the objective of protecting government integrity and public trust. Such policy is implemented by prescribing essential standards of ethical conduct.
2. Ector County employees must discharge their duties impartially so as to assure fair and competitive access to governmental procurement by responsible contractors. County employees will avoid the appearance of unethical or compromising practices in relationships, actions, and communications.
3. It is the intent of the Purchasing Department to promote the County's reputation for courtesy, fairness, impartiality and transparency. The responsibility for achieving this goal rests with each individual who participates in the procurement process. This includes the requesting departments and agencies, the vendors, as well as the purchasing personnel. The Purchasing Department shall act in accordance with ethics and standards as set forth under Texas Law and in NIGP, The Institute for Public Procurement.

#### **4. General Ethical Standards:**

- a. It shall be a breach of ethics to attempt to realize personal gain through public employment with Ector County by any conduct inconsistent with the proper discharge of the employee's duties.
- b. It shall be a breach of ethics to attempt to influence any public employee of Ector County to breach the standards of ethical conduct set forth in this code.
- c. It shall be a breach of ethics for any employee of Ector County to participate directly or indirectly in a procurement when the employee knows that:
  - 1.) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
  - 2.) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - 3.) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
  - 4.) If such conflicts of interest exist, the employee shall notify the Purchasing Agent in writing and remove him/herself from the County procurement process.
- d. It shall be a breach of ethics to offer, give or agree to give any employee or former employee of Ector County, or for any employee or former employee of Ector 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 purchase request, influencing the content or 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 proposal therefore pending before this governmental body.
- e. It shall be a breach 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 Ector County, or any person associated therewith, as an inducement for the award of a subcontract to order.
  - f. The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation thereof.
  - g. It shall be a breach of ethics for any employee or former employee of Ector County knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person. All solicited procurement information is to be kept secret and confidential by all County employees until after an award and/or a contract is approved.

C. **PROCUREMENT POLICIES:**

1. **Statement of General Policy:**

- a. It is the policy of Ector County that all procurements shall be conducted strictly on the basis of economic and business merit to best promote the interest of the citizens of Ector County.
- b. A procurement program encompasses much more than merely acquiring pricing and placing orders for goods and services. Management functions such as planning and scheduling, seeking and researching vendors, assuring the preparation of proper specifications, auditing pricing, proper training of staff and assistants, quality assurance and inventorying of procured goods and/or services, are all part of an efficient program.
- c. Furthermore, a public procurement program operates in full view of the public. A responsible program is fundamental to the County's government and, in contrast to industrial or private procurement; the price of goods procured is not the overriding indicator of performance. More important in public procurement is how the price is obtained. There shall be no place in County procurement for partiality, secretiveness or deception.
- d. Ector County will maintain a procurement program conforming to the best practices of management. To be successful, such a program must embody the proper attitudes and cooperation of all County employees. Only through such cooperative effort can a procurement program be established and preserved to the best interest of all parties.
- e. The procurement process is not instantaneous. Time is required to process the volume of requests received through the steps decreed by State law and County policy. In order to accomplish timely procurement of goods and/or services required by all County departments, the Purchasing Department and all requesting departments must cooperate fully. The Purchasing Department shall develop a process for expedited procurement that shall be followed in circumstances in which "time is of the essence," because required goods and/or services may no longer be available to a requesting county department unless prompt action is taken by the County.

2. **Specific policies:**

- a. Authority to make a County procurement resides in either the County Purchasing Agent or the Commissioners' Court.
- b. All procurements will be for a quality suitable for the purpose at the least possible expense to Ector County. The Purchasing Department promotes economy by consolidating requirements and by setting standards for inventories.
- c. The requests for all purchases will originate at the requesting department level.
- d. All procurements and purchases over \$50,000 will require "competitive bids/proposals" in accordance with Local Government Code Section 262.023. However, this requirement

may be exempted by LGC, Section 262.024, if the Commissioners' Court, by order, grants the exemption.

- e. All Purchase Orders will be issued by the Purchasing Department after an award is made. Before the Purchase Order can be issued, sufficient funding and all associated documents (quotes, contracts, Master Service Agreement/Insurance, etc.) must be submitted, reviewed, approved, properly signed by the appropriate County personnel, and on file with the Purchasing Department.
  - f. No purchase for the County will be made without a Purchase Order to support the award of the purchase unless specific exceptions are provided for in this policy.
    - 1.) Purchases under \$500 are made directly by a department. See page 11 for more details on this type of purchase.
    - 2.) Ector County Commissioners' Court has granted an additional list of exemptions, due to the fact that the cost of the goods and/or services can only be determined "after the fact."
  - g. Procurements will be open and unrestricted, and the Purchasing Department will continually strive to increase competition and to obtain new sources.
  - h. Procurements will be based on established standards and specifications whenever possible.
  - i. Prior procurements are a matter of public record and are available to all "open records" requests.
  - j. Procurements utilizing the firm bid methods Request for Bid (RFB) or Invitation for Bid (IFB) shall be revealed at time of bid opening or after the award.
  - k. Procurements utilizing the proposal method Request for Proposal (RFP) or Invitation for Proposal (IFP) shall be considered and held confidential until after an award and/or contract has been made.
  - l. Any commitment to acquire goods and/or services in the name of Ector County for personal use or ownership is prohibited. Any individual making such a commitment may be liable to prosecution. County employees shall not use County letterhead in making personal purchases or ordering goods and/or services for their own use.
  - m. The County is exempt from payment of taxes under Chapter 20, Title 122A, Article 20.04, Revised Civil Statutes of Texas, for the purchase of tangible property. Any use of the County tax exemption certificate/number for personal purchases is prohibited. Anyone using the County's tax exemption certificate/number for personal purchase may be liable to prosecution.
3. **Bidding Thresholds:**
- a. **Less than \$5,000:**
    - Requires purchase order if over \$499.99
    - Does not require bids
  - b. **\$5,000 — \$49,999.99:**
    - Requires written specifications to vendors
    - Requires three written responses, or
    - May be purchased through a cooperative bid
  - c. **\$50,000 and above:**
    - Requires Commissioner's Court approval for purchase
    - Requires Formal Competitive bid/proposal specifications approved by Court
    - Professional Services and Cooperative bids are exempt from Competitive bidding, if approved by Commissioner's Court.
  - d. **Exemptions from Competitive Bid/Proposal:** Specific exemptions from "Competitive Bidding" procedures can be used, if the Commissioners' Court grants the exemption.

These specific exemptions are listed in the Texas Local Government Code, Chapter 262, Section 024 - Discretionary Exemptions.

### **III. RESPONSIBILITIES OF COUNTY OFFICIALS**

The Purchasing Department is a service agency for all departments and agencies of the County. The procurement function is a “team effort” and the mutual benefits derived depend wholly upon cooperation with each other. This section is a guide for departments and agencies in the procurement program.

#### **A. RESPONSIBILITIES OF DEPARTMENTAL OFFICIALS:**

The Departmental Officials have responsibilities for procurement and purchasing as follows:

1. Read, review and utilize the procurement policies and procedures.
  - a. The Department Head/Elected Official may designate employees to be trained to assist in the procurement program.
  - b. The Purchasing Department, if requested by the Department Head/Elected Official, will assist in providing training to anyone involved with the procurement program.
2. Review their budget for available funds and ensure the request is in the proper line item expense account.
3. Make the necessary arrangements with the Auditor and Commissioners’ Court if budgeted funds are not sufficient for a requested purchase.
4. Supply complete requirements/scope of work in advance, including clear and concise descriptions of the goods and/or services requested, especially those of an engineering or technical background.
5. Allow sufficient time to obtain and award quotes, place the order, and for the vendor to process and make delivery on the requested goods and/or services.
  - a. Plan purchases so as to avoid “rush orders” and/or emergency purchases.
  - b. Assist in the administration of annual contracts that directly affect their operations.
  - c. Forward all budgeted requests to the Purchasing Department for the procurement process to take place.
    - 1.) All formal bid/proposal requests are to be submitted to the Purchasing Department far enough in advance to allow enough time to review and approve the specifications for the solicitation, evaluate and present to the Commissioners’ Court for award in a timely basis. Before the presentation to the Commissioners’ Court, evaluation of bid/proposal specifications shall be made with the knowledge and assistance of the requesting department.
    - 2.) Any pertinent documents submitted during budget hearings to acquire the approved budgeted funds should also accompany the request.
6. Assist the Purchasing Department by suggesting the names of vendors who have access to the particular goods and/or services being requested, especially those of a technical nature.
  - a. Keep competition in mind in order to provide all vendors an equal opportunity to submit a quote for goods and/or services.
  - b. The Purchasing Agent shall not be confined to the list of vendors provided, but shall cooperate with the requesting department to ensure that all goods and or services purchased meet the required quality and specifications of the requesting department.
  - c. Any responsible vendor may be placed on the list upon request by telephone; written request; in person; if found in any other research such as a phone directory, magazine, Internet, etc.; or by any other means.
7. Not obligate, under any circumstances, the Purchasing Department and/or the County.

8. Ensure that all purchases are compliant with State law and County policies.
  - a. Purchase from the awarded vendor of an annual bid.
    - 1.) Any purchase for goods and/or services made from a non-awarded vendor will be void, and the County employee making such a purchase may be held personally accountable and liable for the incurred costs.
    - 2.) Purchases from non-awarded vendors may be allowed in certain instances, such as if the awarded vendor did not carry the required item or if they did not have a sufficient supply of the item, to complete a project in a timely manner.
  - b. Any commitment for goods and/or services made in the name of Ector County by any individual and/or department will be void, and the County employee making such a purchase may be held personally accountable and liable for the incurred costs.
  - c. Any purchase for goods and/or services made from the non-awarded vendor will be void, and the County employee making such a purchase may be held personally accountable and liable for the incurred costs.
9. Be responsible for the inspection of deliveries and/or subject the purchased goods and/or services to such tests as necessary to determine the compliance with the specifications.
  - a. Reject all inferior or unsatisfactory goods and/or services.
  - b. Inform the Purchasing Department on the non-compliance of received goods and/or services.
10. Assist in the administration of the Fixed Asset policy.

**B. RESPONSIBILITIES OF THE PURCHASING DEPARTMENT:**

The Purchasing Department's responsibilities are to:

1. Ensure that the County Procurement Policies and Procedures and State Purchasing laws are followed.
2. Assist in providing training, if requested by the Department Head/Elected Official, to anyone involved with the procurement program.
3. Designate assistants to aid in the performance of the Purchasing Agent's duties.
4. Assist in the Budget process to be acquainted with the needs of all the departments of the County, so that goods and/or services will be secured to meet the department's requirements.
5. Notify Elected Officials or Department Heads if the budget for a requested good and/or service is not sufficient for the purchase.
6. Obtain or assist in the procurement of goods and/or services needed by the requesting departments in a timely and efficient manner.
  - a. Review and research sources and availability of needed goods and/or services and keep informed of current developments in the field of procurement, in market conditions, and new goods and/or services.
  - b. Investigate and analyze, for the benefit of the County, research done in the field of procurement by other governmental agencies and private industry.
  - c. Explore the possibilities of bulk purchasing and combining of orders to take full advantage of discounts.
  - d. Join with other governmental agencies in cooperative purchasing plans and inter-local agreements, with the approval of the Commissioners' Court, when in the best interest of Ector County.
7. Reserve the right to accept or reject all or any part of a bid/proposal and to accept the offer considered the most advantageous to the County on goods and/or services under the statutory limit of \$50,000 set by the legislature.
8. Ensure the timely delivery of goods and/or services to avoid interruption of County operations.
  - a. Advise departments of any unusual delay in the delivery schedule of pending orders.
  - b. Assist the departments in the inspection of the delivered goods and/or services.



9. Conduct the Department in such a way that vendors will:
    - a. Be assured of the fairness of the awards.
    - b. Be encouraged to continue participating in the procurement process.
    - c. Furnish competition to assure the County with the highest quality goods and/or services at the lowest cost and/or best value.
  10. Ensure that vendors are aware that Ector County is exempt from all Federal excise tax and State sales tax. Exemption certificates will be executed by the Purchasing Agent upon request.
  11. Investigate and report any possibilities of collusion among vendors.
  12. Obtain from each Elected Official or Department Head a list of departmental employees authorized to sign requisitions and supply orders.
  13. Not to discriminate against vendors in awarding of bids with respect to race, religion, color, sex, or national origin, in accordance with the State of Texas statutes.
  14. Be responsible for the Fixed Asset policy.
- C. **RELATIONSHIP WITH VENDOR REPRESENTATIVE:**
1. The procurer-seller relationship is one of mutuality. The responsibility of establishing a relationship of mutual confidence and satisfaction between the County and its vendor lies with the Purchasing Department. Therefore, it is necessary that the Purchasing Department be aware of all transactions between the County and its vendors.
  2. Departments' and employees' relationships with the vendor's representatives should be as follows:
    - a. The representatives of all vendors will be received by the Purchasing Department promptly and courteously.
    - b. A Department Head should make the Purchasing Department aware of all contacts and communications with a vendor or a vendor's representative, and should involve the Purchasing Department in procurement negotiations. The County employee cannot obligate the County, and should always so advise the vendor.
    - c. Any useful information received by a department (interviews, catalogs, advertising, and etc.) from a vendor should be forwarded to the Purchasing Department. The Purchasing Department will maintain this information for use by all County departments.
    - d. All correspondence with vendors regarding Purchase Orders should originate in the Purchasing Department, unless an approved arrangement has been made.
    - e. The Purchasing Department shall participate in all procurement negotiations.
    - f. The Purchasing Department may ask questions about the quality and kind of goods and or services requested by a county department in an effort to ensure the that best interest of the County may be served; However, the County Department Head/Elected Official retains the authority to determine the quality, specifications, and kind of goods that are needed by the department.

## **IV. PURCHASING PROCEDURES**

- A. **PURCHASES UNDER \$500:** These are Direct Purchases and will not require a purchase order to be issued.
- B. **PURCHASES \$500 AND GREATER:** Purchases for goods and/or services in the amount of \$500 will require a Purchase Order before the order is placed unless exempted in this policy.
- C. **REQUEST FOR A PURCHASE:** Purchase requests should be made with the use of the Purchase/Requisition Form. The Form will be filled out by the requesting department with the appropriate information. The original (white) and first copy (yellow) will be sent to the

Purchasing Department. The second copy (pink) should be kept and filed with the requesting department.

1. The Purchasing Department will determine if funds are available under the appropriate line-item expense account budget allocation. If funds are not available, the Requisition will be returned to the appropriate Department. The returned Requisition will not receive further consideration until such time that funds become available through an approval, which must be initiated by the requesting department.
2. The Purchasing Department will determine which vendors to contact, solicit quotes, and award. Then the Purchasing Department will complete the Form with the appropriate information, issue a Purchase Order for distribution.
3. Upon receipt of the Purchase Order, the selected vendor will send the goods and/or services to the requesting department. The vendor will send the invoice for the purchase directly to the County Auditor.
4. When the goods and/or services are received, in acceptable condition, by the requesting department, the "Receiving Copy" of the Purchase Order will be signed and sent to the Purchasing Department. The Purchasing Department will process the "Receiving Copy" and forward to the County Auditor for payment. This completes the procurement process.

**D. REQUEST FOR A PURCHASE FROM AWARDED BIDS/PROPOSALS:**

Departments are to submit the completed Purchase/Requisition Form to the Purchasing Department for the issuance of a Purchase Order. Awarded bid/proposal letters are provided by the Purchasing Department to the appropriate departments. Bid/proposal awards are also posted on the County Website for departments to use.

- E. EMERGENCY PURCHASES:** Emergency purchases and repairs should only be for an unexpected and urgent need to keep buildings and machinery in operating condition when their idleness would result in expense to the County; or for the public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county; and/or for the unforeseen damage to public property.

1. **The department making such a request must notify the Purchasing Department of the nature of the emergency.**
2. When possible, a purchase order must be obtained for the purchase.
3. Emergency purchases are costly and should not be used except when absolutely necessary.

- F. SOLE SOURCE PURCHASES:** A sole source purchase occurs when only one vendor possesses the unique capability to meet the particular requirements.

1. The Purchasing Department will require the requesting department to provide in writing the justification explaining why this is the only source that can fulfill the requirement.
2. The Purchasing Department reserves the right to investigate and research other sources.
3. The Purchasing Agent will present a list of Sole Source vendors to the Commissioners' Court for their approval annually in accordance with LGC Section 262.003.
4. Sole Source purchases must follow the procedures regarding monetary values as mentioned in sections A & B above.

- G. BLANKET PURCHASE ORDERS:** A Blanket Purchase Order (BPO) will allow multiple purchases of like type goods and/or services that have an awarded quote, on "as needed basis" throughout the fiscal budget year. For example, these BPOs can be utilized on contracted goods and/or services such as plumbing and/or electrical repair parts, office supplies, printer supplies, highway materials, etc.

1. BPOs will be issued by the Purchasing Department, with the cooperation of the requesting department, at the beginning of each new fiscal year.
2. It is the responsibility of the department assigned the BPO to track the order throughout the life of the BPO.
3. This will require "Partial Payments" of the BPO, see Section VI., B., page 12 on procedures for partial payments.

4. Blanket orders will end when the encumbered funds have been all expensed out; the end of the fiscal budget year; the end of the awarded contract period; or cancellation by the requesting department or Purchasing.
  5. These BPOs should not be used for the purchase of fixed assets or individual purchases exceeding \$500.
- H. **PURCHASING CARD PROGRAM:** This Card can be used for purchases as detailed in the Purchasing Card Program. See Purchasing Card Program for policy and procedures.
- I. **PROFESSIONAL SERVICES:** Professional Services should be obtained utilizing the Professional Services Procurement Act as defined and described in the Texas Government Code; Title 10. General Government; Subtitle F State and Local Contracts and Fund Management; Chapter 2254; Subchapter A. Professional Services.

## **V. PURCHASE REQUISITION**

The Ector County Departmental Purchase/Requisition is a three (3) part form that is numbered and assigned to each department. These forms can be obtained from the Purchasing Department. The original (white) and first copy (yellow) with all documentation attached will be sent to the Purchasing Department. The second copy (pink) should be kept and filed in the requesting department.

The following is a list of information used to complete a Requisition. See page 15 for details.

- A. **REQUISITION NUMBER:** Each Requisition will be numbered for tracking references.
- B. **DEPARTMENT:** This is the name of the requesting Department.
- C. **DATE:** This is the date the requisition is initiated by the requesting Department.
- D. **LINE ITEM ACCT. NO.:** This will be the appropriate budgeted expenditure line item account number for the requested goods and/or services.
- E. **DESCRIPTIONS AND SPECIFICATIONS:** Present the type of goods and/or services desired clearly as to brand, model number, size, dimensions, color, grade, unit of measure (“each”, “dozen”, “cubic yards”, “gallons”) and etc., to be used for clarification. When necessary, the information may be put on a separate sheet attached to the requisition and transmitted to the Purchasing Department. **NOTE:** All shipping, handling and freight costs should be addressed in this area of the Requisition.
- F. **QUANTITY:** Insert the number or quantity required, per the unit of measure.
- G. **UNIT PRICE:** The price per the unit of measure.
- H. **TOTAL AMOUNT:** This will be the sum, of the unit prices times the quantities, of that line.
- I. **TOTAL AMOUNT:** This will be the “Grand Total” of the whole Requisition.
- J. **INVOICE NUMBER:** To be completed by Department only if requisition is used for “Direct” purchases, as provided in the purchasing policy.
- K. **INVOICE DATE:** To be completed by Department only if requisition is used for “Direct” purchases under \$500, as provided in the purchasing policy.
- L. **COMMENTS:** Department may use this space for any special instructions to the Purchasing Department concerning the Requisition.
- M. **DEPARTMENT HEAD APPROVAL:** The Department Head/Elected Official or authorized departmental employee signature is required. This signature approves the request at the departmental level.
- N. **PURCHASING AGENT APPROVAL:** The Purchasing Agent or authorized Purchasing Department employee signature is required. This signature approves the request at the Purchasing Department level.

- O. COUNTY AUDITOR APPROVAL: The Auditor or authorized Audit Department employee signature is required. This signature approves the request at the Audit Department level.
- P. TYPE OF TRANSACTION: These are checked off and classified as to the appropriate type of purchase transaction.
- Q. TRANSACTION DATES: These dates are references as to when the Requisition was received and processed in the Purchasing Department.
- R. PURCHASE ORDER NO.: This number is computer generated in the Purchasing Department.
- S. VENDOR NO.: This number is assigned by the Audit department for the payment process. This will be used by the Purchasing and Audit departments.
- T. VENDOR: This is the vendor name who is awarded the prices on this Requisition.

## **VI. PURCHASE ORDER**

The Ector County Purchase Order (PO) is a five (5) part form that is numbered and titled. The PO number is computer generated and will originate from the Purchasing Department.

**PURCHASES OF OVER \$500:** Purchases of \$500 or more must be made by purchase order, except for the following:

- Emergency Purchases
- Purchases completed with purchasing card
- Items or services on the Purchasing Policy Exemption List, see pages 13 – 14.

A. The five parts of the PO form are:

1. The Vendor Copy (white) is submitted to the awarded vendor.
2. The Auditor Copy (yellow), along with the original Requisition and PO register are sent to the Audit Department.
3. The Purchasing Copy (pink) is kept with all other documentation in the Purchasing Department.
4. The Department Copy (green) is submitted to the requesting department for their files.
5. The Receiving Copy (blue) is sent to the requesting department.
  - a. The Receiving Copy (blue) is to be kept, by the requesting department, until all of the ordered goods and/or services are received and accepted.
  - b. Upon acceptance the Receiving Copy (blue) should be, dated and signed, and sent back to the Purchasing Department for processing of the payment to the vendor.

B. Partial Payments of a Purchase Order may be made upon certain circumstances.

1. Partial Receipt of a PO: There may be multiple receipts of goods and/or services throughout the life of the PO.
  - a. The receiving department is to retain their original “Receiving Copy” (blue).
  - b. At each accepted receipt of goods and/or services the department will make a copy of the “Receiving Copy” (blue) and attach the documentation on the amount of goods and/or services that have been received and submit to the Purchasing Department.
  - c. Document and/or correct the copy for the exact goods and/or services that were received.
2. Blanket Purchase Orders: These type of PO’s may be used for the multiple purchases of like type goods and/or services, that have an awarded quote, on “as needed basis” throughout the fiscal budgeted year.
  - a. The receiving department is to retain their original “Receiving Copy” (blue).
  - b. At each accepted receipt of goods and/or services the department will make a copy of the “Receiving Copy” (blue) and attach the documentation on the amount of goods and/or services that have been received and submit to the Purchasing Department.
  - c. Document and/or correct the copy for the exact goods and/or services that were received.

3. Upon the “Final” receipt and acceptance of goods and/or services the original “Receiving Copy” (blue) should be submitted to purchasing for the completion of the PO and processing of the payment to the vendor.

## **Purchase Order Exemptions**

A provision is made in Ector County Procurement Policies and Procedures Manual, Section II., C., 2., f.2, that purchases of certain items or services as approved by the Commissioners’ Court may be exempted from the Procurement process. Due to the fact that the cost of the following items can only be determined “after the fact”, it is recommended that an exemption be granted by the Court.

**The following is a list of the exemptions approved by Commissioner’s Court:**

1. All Children’s Services bills.
2. Travel—including airfare, advances, reimbursements, car rentals, course registration fees, and local mileage reimbursements.
3. Annual membership dues and fees.
4. All line items in 220 non-departmental judicial accounts—including court reporters, court appointed attorneys and medical commitments.
5. Prisoner and deputy expenses:
  - \*\*Medical bills (doctor and hospital)
  - \*\*Psychological tests
  - \*\*Transport expenses
  - \*\*Photos (Adult Probation)
  - \*\*Drugs by prescription (individualized)
  - \*\*Commodities (cost, storage and transportation)
6. Trial expenses:
  - \*\*Witness expense (lodging, travel, etc.)
  - \*\*Investigation expense
  - \*\*Testimony expenses
7. County Advertising:
  - \*\*Legal notices for elections, bids, etc.
  - \*\*Personnel advertising
8. Telephone, utilities and cellular phones.
9. Indigent Burials.
10. Automatic updates to reference books and subscriptions.
11. Library - books, videos, genealogy materials, etc. that can only be purchased from a single source.
12. Maintenance repair service calls.
13. Postage including Federal Express, UPS, and DHL.
14. Gasoline credit card bills.
15. Supply items purchased through the Purchasing Department.
16. Warranty or patent repairs.
17. Items where a check must be sent with the order and a purchase order will not be accepted (ex. Book order, sole source).
18. County Agent demonstration items (food and supplies).
19. County Insurance—Dept. 960.
20. Public scale usage.
21. Professional Services:

- \*\*Legal fees
  - \*\*Pathologist
  - \*\*MHMR
  - \*\*Physicians
  - \*\*Contract Labor (Coliseum, Adult Probation, Election Programming and workers, etc.)
  - \*\*Consultants—Commissioners' Court awarded on an hourly basis
22. Temporary items agreed upon by the County Auditor and Purchasing Agent due to need to process bid items properly.
  23. Vehicle and Equipment Repairs.

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**ECTOR COUNTY  
DEPARTMENTAL PURCHASE/REQUISITION**

Purchase Order No. \_\_\_\_\_

Vendor No. \_\_\_\_\_

Vendor: \_\_\_\_\_

**REQUISITION NUMBER A 1741849**

Department: \_\_\_\_\_

Date: \_\_\_\_\_

LINE ITEM ACCT. NO.	Description and Specifications	Quantity	Unit Price	Total Amount	TYPE OF TRANSACTION
-					DIRECT - UNDER \$250
-					OVER \$250 - P.O.
-					EMERGENCY
-					BID ITEM
-					COURT AWARDED
-					SOLE SOURCE
-					OTHER / EXEMPT
-					<b>TRANSACTION DATES</b>
-					RECEIVED IN PURCHASING
-					FUNDS VERIFIED / P.O.
-					SENT TO AUDIT
-					RETURNED TO DEPARTMENT
-					DATE P.O. RECEIVED
<b>TOTAL AMOUNT \$</b>					

Invoice # \_\_\_\_\_ Invoice Date: \_\_\_\_\_

Comments: \_\_\_\_\_

DEPARTMENT HEAD APPROVAL: \_\_\_\_\_

PURCHASING AGENT APPROVAL: \_\_\_\_\_

COUNTY AUDITOR APPROVAL: \_\_\_\_\_

## **VII. PURCHASING PROCEDURES FOR FEDERAL FUNDS**

The County of Ector 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.

### **§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 sub-recipients 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 sub-award. 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 increase 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 increase 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.

(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 through A/E firms that are a potential source to perform the proposed effort.

(c) ***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.

**§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.

## 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 effected and the basis for settlement.

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

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

(E) [Contract Work Hours and Safety Standards Act](#) ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance

with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2](#) (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

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

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

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

**(J) See § 200.323\***

**(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.

These Policies and Procedures are passed and approved by the County of Ector through the County Commissioners Court on \_\_\_\_\_.

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Debi Hays  
County Judge