

BRAZORIA COUNTY



PURCHASING

POLICY AND PROCEDURE MANUAL

FORWARD

THE COUNTY PURCHASING DIRECTOR'S MISSION

1. To establish policies and procedures that are in full compliance with procurement laws.
2. To work in concert with the County Auditor as part of the system of checks and balances to ensure the proper expenditure of taxpayer's dollars.

Centralized purchasing is valuable for a number of reasons:

- To ensure compliance with procurement laws by establishing policies and procedures that are consistent with the Texas Local Government Code.
- To allow for the consolidation of small purchases by individual departments into larger volume purchases for the entire County.
- The Purchasing office, and its personnel, have and will increasingly develop a solid foundation of knowledge and experience about purchasing, marketing trends, prices and vendors. This knowledge, expertise and volume purchasing power gives Brazoria County leverage with vendors which will demand lower prices while ensuring county-wide accountability.
- Centralized knowledge and expertise puts the purchasing functions on a professional footing and inspires public confidence in the actions of the County.

It is the intent of this manual to promote effective and consistent procurement in Brazoria County.

This manual explains the policies and procedures to be followed in the implementation of the duties of the County Purchasing Director.

The following references were used in the compilation of this manual:

Model Purchasing Manual for Texas Cities & Counties: Published by the State Comptroller's Office.
Texas Local Govt Code 262: Purchasing & Contracting Authority of Counties.

Texas Local Govt Code 271: Purchasing & Contracting Authority of Municipalities, Counties and certain other Local Governments.

Texas Govt Code 2269: Contracting and Delivery Procedures for Construction Projects

2 CFR PART 200- UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Model Procurement Code for Governments: Published by the ABA

Texas Association of Counties Model Procurement Manual

This procedure manual is for all Brazoria County purchases subject to the County Procurement Act and procedures described in Texas Local Government Code 262 & 271. Certain Brazoria County departments have discretionary funds that are not subject to the Texas Procurement Act.

In the intent of good procurement practices, the Purchasing Department is always willing to competitively procure items financed by these funds. Department heads and elected officials are encouraged to work with Purchasing to pursue cost savings that may be realized through competitive procurement operations.

Please identify, via requisition notes, any purchase that is funded by a discretionary fund, that a department head or elected official does not wish to be competitively solicited by the Purchasing Department.

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I. BRAZORIA COUNTY PURCHASING CODE OF ETHICS:

A. GENERAL ETHICAL STANDARD

It shall be a breach of ethics and law:

- to attempt to realize personal gain through public employment with Brazoria County by any conduct inconsistent with the proper discharge of the employee's duties.
- to attempt to influence any public employee of Brazoria County to breach the standards of ethical conduct set forth in this code.
- for any employee of Brazoria County to participate directly or indirectly in a procurement when the employee knows that:
 - the employee, or a member of the employee's immediate family, has a financial interest pertaining to the procurement;
 - 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
 - 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.
- to offer, give or agree to give any employee or former employee of Brazoria County, or for any employee or former employee of Brazoria 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 of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other peculiar matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal, therefore, pending before this local government.
- 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 Brazoria County, or any person associated therewith, as an inducement for the award of a subcontract or order.

(Contract Clause - The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.).

- For any employee or former employee of Brazoria County knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated gain of any person.¹

ANY INTENTIONAL VIOLATION OF LAW WILL BE PROSECUTED BY THE FULL EXTENT OF THE LAW.

ALL COUNTY PERSONNEL INVOLVED IN PURCHASING DECISIONS SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAW

¹ This Code of Ethics is taken from the "Standard Financial Management System for Texas Cities and Counties – Model Purchasing Manual."

Criminal Penalties for violation of the Procurement Act:

LGC 262.011. Purchasing Agents

(m) A person, including an officer, agent, or employee of a county or of a subdivision or department of a county, commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$100. Each act in violation of this section is a separate offense.

(n) This section applies to all purchases of supplies, materials, and equipment for the use of the county and its officers, including purchases made by officers paid out of fees of office or otherwise, regardless of whether the purchase contract is made by the commissioners court or any other officer authorized to bind the county by contract.

LGC 262.023. Competitive Requirements for Certain Purchases

(c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this subchapter, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract.

Criminal Penalties:

LGC 262.034 Criminal Penalties

(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 Section 262.023. An offense under this subsection is a Class B misdemeanor.

(c) A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a). An offense under this subsection is a Class C misdemeanor.

II. RELATIONSHIPS:

A. Relationship of Purchasing Department and other County Departments:

The Purchasing Department is a service organization acting as an intermediary between County offices and its vendors. To successfully represent the best interests of the County, it is essential to have the cooperation and a strong working relationship with all County offices. This section of the Purchasing Manual is to be used as a guide to assist in identifying and understanding the responsibilities and obligations required in the purchasing process.

B. Relationship with Vendor's Representative:

1. The buyer-seller relationship is one of mutuality. The responsibility of establishing and maintaining a professional relationship between the County and its suppliers lies with the Purchasing Department. For this reason, it is imperative that the Purchasing Department be made aware of proposed transactions involving the County.

2. It is the responsibility of the Purchasing Department to represent County departments in the purchasing process. This includes the contact normally associated with sales calls. By observing the policies and procedures outlined in this manual, the time of both the County and its suppliers will be maximized.

3. The relationship between the County Purchasing Department and vendor representatives will be as follows:

a. Representatives of vendors may be received by the Purchasing Department between 8 a.m. and 5 p.m. Appointments are recommended.

- b. Any useful information received from interviews, catalogs, advertising, etc., will be filed in the Purchasing Department's Specification Library. Departments are encouraged to visit the library during normal working hours (8 a.m. to 5 p.m., Monday through Friday), if they are seeking information.
- c. All correspondence with suppliers should originate in the Purchasing Department. Should a County department head find it necessary to correspond with a vendor for any reason, a copy of the correspondence should be sent to the Purchasing Department. Estimated costs for requisition information purposes may be obtained from vendor catalogs or by obtaining an informal estimate from the vendor. Departments may not negotiate or make commitments to vendors without Purchasing Department approval.
- d. All County personnel must keep themselves free from the image of conflict of interest by not accepting favors, gifts or entertainment offered by any vendor.

III. RESPONSIBILITIES:

A. RESPONSIBILITIES OF PURCHASING AGENT: The County Purchasing Director is responsible for:

- 1. Having a working knowledge of and following the Texas procurement laws. For purchasing related functions utilizing Federal funds, the County will comply with CFR 200 318 (a) through 200.326 of the Code of Federal Regulations.
- 2. Assisting all county departments in meeting their needs for operating equipment, supplies, and materials.
- 3. Securing products that meet the requirements of the department at the lowest and best price to the County.
- 4. Knowing the sources and availability of needed products.
- 5. Reviewing and approving specifications submitted by end-users.
- 6. Maintaining all Certificates of Interested Parties Form 1295 for all contracts that require approval by the Commissioners' Court.

B. REQUISITIONER: The Requisitioner is responsible for:

- 1. Proper planning, submitting requisitions in a timely fashion, and allowing the County Purchasing Office sufficient time to competitively purchase each requisition submitted, select the vendor, place the order and allow the vendor to make delivery.
- 2. Preparing detailed specifications.
- 3. Supplying in advance, if requested, a list of anticipated purchases.
- 4. Notifying the County Purchasing Director of any abnormal or unusual demands.
- 5. Not obligating the County for purchases of goods or services.
- 6. Avoiding illegal or improper purchases.
- 7. Providing the County Purchasing Director with a COMPLETE, CLEAR, CONCISE DESCRIPTION of the item(s) or service(s) requested. The Buyers need to know exactly

what you need. You may not get what you were expecting, if the description is too brief or incorrect.

8. MONITORING annual contracts and blanket orders and initiating renewal procedures prior to expiration in order to avoid interruptions in service. Departments must provide adequate lead time order processing by submitting the renewal request, along with proper specifications, at least sixty (60) days prior to expiration.

C. GENERAL GUIDELINES:

Departments should be cognizant of budget balances, and plan accordingly.

Plan purchases in order to keep “expedited” and “emergency” requisitions to a minimum. The County rarely enjoys any economic benefits from rush and emergency purchases. In most cases, prices for commodities and services are at a premium when there is not proper time allowed for the Purchasing Department to explore sources, options and obtain competitive pricing. The Brazoria County Purchasing Department is committed to expediting all purchase requisitions within a reasonable time frame.

Provide the Purchasing Department ample time to process purchase requests.

1. Departments should allow a 3-10 working day cycle time for purchases less than \$5,000. This allows Purchasing the opportunity to consolidate requisitions and obtain competitive quotes when appropriate.
2. Departments should allow up to a three (3) week cycle time on all purchases requested that will exceed \$4,999.99 but are under \$50,000.
3. Purchases between \$25,000 and \$50,000 require informal written quotes. Allow up to a three (3) week cycle time.
4. On purchases \$50,000 or more, a department should allow a four (4) to twelve (12) week turnaround as formal bids or proposals will be required

NOTE: CYCLE TIME REFERS TO THE TIME BETWEEN WHEN A REQUISITION IS RECEIVED IN PURCHASING AND ASSIGNED TO A BUYER, AND WHEN AN ACTUAL PURCHASE ORDER IS PLACED WITH A VENDOR. CYCLE TIME DOES NOT INCLUDE THE TIME REQUIRED FOR DELIVERY OR THE TIME IT TAKES FOR THE BUYER OR USER DEPARTMENT TO MAKE CORRECTIONS OR ADDITIONS TO THE REQUISITION. CYCLE TIME DOES NOT START UNTIL ALL SPECIFICATIONS ARE PROVIDED.

Assure that all County employees responsible for making department requests for purchases have read and understand the purchasing procedures of Brazoria County.

Review all purchase requests to assure they are descriptive and specific but do not prevent competitive bidding of comparable items.

Since there is no central receiving point, each department is responsible for receiving commodities and services. Departments should make Purchasing aware of a shortage, late delivery, damaged merchandise or any other problem relating to the vendor’s performance within two (2) days by calling the Purchasing Department and following up with a written explanation of the situation, if requested.

Departments should understand and appreciate the nature of public purchasing and compose all purchase requests with the purpose of promoting competitive bidding.

IV. THE PURCHASING POLICY:

LGC 262.011. Purchasing Agents

(d) The county purchasing agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used, by the county or a subdivision, officer, or employee of the county, except purchases and contracts required by law to be made on competitive bid. A person other than the county purchasing agent may not make the purchase of the supplies, materials, or equipment or make the contract for repairs.

262.0225. Additional Competitive Procedures

(a) In the procedure for competitive bidding under this subchapter, the commissioners court of the county shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.

(b) A county shall receive bids or proposals under this subchapter in a fair and confidential manner.

- A. The County Purchasing Agent shall purchase all supplies, materials and equipment required or used, and contract for all repairs to property used, by the County or a subdivision, officer, or employee of the County, except purchases and contracts required by law to be made on competitive bid. A person other than the County Purchasing Agent may not make the purchase of the supplies, materials or equipment or make a contract for repairs.
- B. The County Purchasing Director shall supervise all purchases made on competitive bids, and after the Commissioners' Court award, shall see that all purchased supplies, materials and equipment are delivered to the proper county officer or department in accordance with the purchase contract. §262.011(e) Texas Local Government Code.
- C. A purchase made by the County Purchasing Director shall be paid for by a warrant drawn by the County Auditor on funds in the County Treasury in the manner provided by law. The County Auditor may not draw and the County Treasury may not honor a warrant for a purchase unless the purchase is made by the County Purchasing Director or on competitive bid as provided by law. §262.011(f) Texas Local Government Code.
- D. Purchases will be of a quality suitable for the purpose intended at the least expense to the County.
- E. Purchases require the use of a requisition from the using department. No purchase order or purchase order number will be issued until a proper requisition is received in the Purchasing Department.
- F. Purchase Orders or commitments to buy will be prepared and issued only by the County Purchasing Director or his employees. 262.011(d).
- G. Using departments may be authorized to issue "P.O. releases" against established contracts or blanket purchase orders.
- H. Selection of vendor on non-bid purchases rests exclusively with the County Purchasing Department. The County Purchasing Director has neither the duty, power, authority, nor desire to determine whether or not a purchase should be made; his authority extends only to selection of vendor.
- I. PURCHASE ORDERS MAY NOT BE ISSUED AFTER THE FACT, UNLESS APPROVED BY COMMISSIONER'S COURT. There are two reasons for this policy:
 - 1. The Texas Local Government Code is quite clear on the point that the County Purchasing Director makes ALL purchases (except those made on competitive bid). Issuing a purchase order after the fact seeks to validate an improper purchase.

2. Should the County Purchasing Director issue a purchase order after a county employee has already made the purchase, dual deliveries may result.
- J. Brazoria County will not be obligated to purchase equipment or accessories that are delivered for use on a trial basis.
- K. The following purchasing actions that are made with the intention of avoiding competitive bidding requirements are in violation of the law: (Texas Code 262.023). An offense under this subsection is a Class C or B Misdemeanor depending on the type of violation: (see 262.034)
- COMPONENT PURCHASES: purchasing an item that would normally have been bid as a whole in a series of component purchases
 - SEPARATE PURCHASES: purchasing an item in a series of separate purchases that normally would have been purchased in one
 - SEQUENTIAL PURCHASES: purchases made over a period of time that in normal purchasing practices would be made as one purchase.

262.034 Criminal Penalties

- (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 Section 262.023. An offense under this subsection is a Class B misdemeanor.
- L. No County employee has the authority to request a purchase of supplies, materials equipment or services for his/her own personal use.
- M. Any commitment to acquire goods or services without an authorized purchase order is prohibited. Anyone authorizing an expenditure of funds for goods or services prior to securing a proper purchase order may be held personally responsible the payment.

N. Process to use when the County receives no responsive bids:

Per Texas Local Government Code 262.0225(d), a county that complies in good faith with the competitive bidding requirements of Texas Local Government Code 262.0225 and receives no responsive bids for an item, may procure the item under Section 262.0245.

Section. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county purchasing agent or, in a county without a purchasing agent, the commissioners court shall adopt procedures that provide for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item that is not subject to competitive procurement or for which the county receives no responsive bid.

The following procedure will be used by the County Purchasing Agent when no responsive bids are received:

- 1) Advertise for formal procurement a second time.
- 2) If no responsive bids are received after two (2) formal procurement attempts, the County Purchasing Agent shall solicit at least three (3) vendors for informal quotes without advertisement. A “no quote” or “no response” from a vendor will count as a solicit.
- 3) The County Purchasing Agent shall review the quote(s) received and make a recommendation to Commissioners’ Court for approval to award based on the informal Request for Quote process.

V. THE REQUISITION:

The following section describes the requisitioning process.

Requisitioning is the formal request for a purchase to be made. It is the first step after the need for a good or service is recognized.

The requisition process must include a system of authorizations and safeguards so that improper or illegal purchasing is difficult both to initiate and to conceal.

TEXAS COUNTIES ARE REQUIRED BY STATUTE TO USE REQUISITIONS (Local Government Code, Section 113.901).

In order to issue a purchase order, a proper requisition must be received in the Purchasing Department.

1. The purpose of a requisition is to inform the Purchasing Department of the needs of the requesting department, and to correctly identify the material requested.
2. A requisition is required, regardless of dollar value.
3. The requisition must be prepared far enough in advance of the required delivery date to enable the County Purchasing Department to perform their required duties and to allow time for delivery by the vendor.
4. The department head or authorized person within the department will prepare the requisition.
5. Requisitions should fully describe to the Purchasing Department what to buy, when it is required and where the product is to be delivered or the service that is to be performed. Requisitions must contain the following data:
 - a. Commodity code.
 - b. Requested Delivery date.
 - c. Suggested vendor, address, phone no., fax no., contact name.
 - d. "Ship to" address. (Department street address)
 - e. Funding source. (account number)
 - f. Quantity.
 - g. Estimated unit cost.
 - h. Complete description of item(s), (including model/stock#, color, size) "MISC. SUPPLIES" is not sufficient.
 - i. "Bill to" address.
 - j. Project code (if applicable)
 - k. Unit of measure.
 - l. End User's Name

6. Please refer the Purchasing Department to a particular vendor whose product has been used previously and has been found to be satisfactory. The vendor suggested will be given full consideration by the Purchasing Department.
7. If a trade-in is involved, requisitions must show the county tag number, serial number, make, model and any other pertinent information of the equipment to be traded.
8. Requisitions for services will include an accompanying memo or statement of work from the requisitioning department that will provide additional details regarding the required service, if necessary.
9. Estimated costs may be obtained from vendor catalogs or by obtaining an informal estimate from the vendor. Departments may not negotiate or make commitments to vendors without Purchasing Department permission.
10. The following non-biddable purchases do not require formal purchase orders and may be obtained by submitting a check request (bill head) to the auditors' Office: travel related expenses, hotel reservations, airline tickets, meals, seminars & training, postage, professional memberships.

VI. PURCHASE ORDERS:

A. THE ROUTINE PURCHASE ORDER:

1. The Purchase Order is the seller's authorization to invoice and deliver the equipment, materials, supplies or service specified. All Purchase Orders should be written concisely and clearly to avoid misunderstandings and unnecessary correspondence with vendors.
2. The Purchase Order will be issued by the County Purchasing Department only. The using department will submit all requisitions to the County Purchasing Department and will NOT enter into negotiations with any vendor for the purchase of equipment, materials, supplies or services except as outlined in the expedited purchase procedure. The Purchasing Department will assign all Purchase Orders to the vendor.
3. Dollar thresholds for purchase orders:

If a requisition requires an expenditure of funds in an amount less than \$50,000.00, the Purchasing Department will make and approve all purchases unilaterally. Purchasing will take an action appropriate to the following thresholds:

- Less than \$5,000.00 -

Informal quotations may or may not be solicited on a requisition according to Purchasing Department determination.

- \$5,000.00 & less than \$25,000.00 -

Telephone price quotations will be sought. All telephone quotations will be documented and recorded by the Purchasing Department.

- \$25,000.00 & less than \$50,000.00 -

Informal written bids quotes will be solicited.

- Purchases **Exceeding** \$49,999.00 -

Will be conducted by the informal, written, bid process.

Purchases \$50,000 and above will be procured using the formal solicitation process as described in **LCG 262** and **271**. **Texas Government Code 2269 will be used for public work contracts. Purchases utilizing Federal funds will comply with the applicable sections of CFR 200 318 (a) through 200.326 of the Code of Federal Regulations**

The Purchasing Director reserves the right to deviate from the policy for any purchases or under the competitive solicitation threshold, if it is in the best interest of Brazoria County and if it will facilitate specific County operations. If a deviation from the policy is required, the Purchasing Director will authorize the deviation by signing the Purchase Order giving approval.

B. THE CONTRACT OR BLANKET PURCHASE ORDER:

1. The Blanket Purchase Order (sometimes referred to as an open purchase order) is a cost-cutting tool used in purchasing departments throughout Texas and the United States. The Blanket P.O. is used to reduce time, reaction time, effort and paperwork; it is NOT, however, designed as a means to circumvent the competitive pricing system employed in sound purchasing departments.
2. Blanket Purchase Orders are appropriate in the following situations:
 - a. When the vendor and price of the desired item is set by competitive bid or contract and various quantities may be needed during the period of the contract.
 - b. For Urgently Needed Repair Parts:

The County Purchasing Director may establish blanket orders to be used to procure repair parts or other items that are required to prevent work slow downs, stoppages, service interruptions, hazardous situations or safety related emergencies. These blanket orders may be used only for the purchase of goods or services necessary to resolve the urgent situation. They may not be used to purchase general goods or services. Any abuse of the use of blanket purchase orders may result in the cancellation of the blanket and the use of individual requisitions. County employees who abuse the use of blanket orders may be held financially responsible for the purchased goods or services.
 - c. As determined by the County Purchasing Director, for specific products or services with established vendors (i.e., UTILITIES, towing services, transmission rebuilds, dealer replacement parts, automobile batteries, etc.).
 - d. For equipment rental when length of period is unknown.
 - e. When a remodeling project is planned and the logical material suppliers are known, but the purchase of all required materials at one time would be impractical.
 - f. At the discretion of the Purchasing Department, when to do so would be in the best interest of Brazoria County.
3. Blanket Purchase Orders are INAPPROPRIATE for the following:
 - a. Purchase of general supply items, unless on established contract. These purchases should be requested either as Routine or Expedited.

- b. “Going Shopping.” The taxpayers of Brazoria County deserve the best planning of which we are capable. The rationale that, “I have \$200.00 left and I need a blanket purchase order to XYZ Supply Company to use it up,” is contrary to the trust placed in each of us.
 - c. “Just in Case.” Requesting Blanket Purchase Orders to be issued to a number of vendors on a regular basis “just in case we may need them” is a direct reflection on the planning capabilities of the end user.
4. Blanket Purchase Orders must be requisitioned as with any other purchase and must contain information required on all requisitions:
- a. Commodity code. (future)
 - b. Requested delivery date.
 - c. Suggested vendor, address, phone no., fax no., contact name.
 - d. Ship to address.
 - e. Funding source.
 - f. Quantity.
 - g. Total dollars committed. Only bid items may exceed \$25,000.
 - h. Complete description of item(s), (including model/stock#, color, size) “MISC. SUPPLIES” will not be accepted.
 - i. Bill to address.
 - j. Project code. (if applicable)
 - k. Period of time. Expiration date must be within current fiscal year.
5. When a Blanket Purchase Order is issued to a department it is important that the department keep a running total of their purchases.
6. Contracts: After contract award, a user may be directed by the Purchasing Director to procure the contracted goods and services as needed by issuing releases against the contract or Blanket Purchase Order.

Contracts for Goods or Services: The user department needs to monitor and document contractor performance/compliance. All documentation of non-compliance should be shared with Purchasing.

To enforce contractual terms, documentation of specific non-compliance must be available. Specific dates, locations, examples, etc. must be documented.

C. THE EXPEDITED OR RUSH PURCHASE ORDER:

1. Expedited Requisitions

Departments should plan purchases in order to keep “expedited” and “emergency” requisitions to a minimum. The County receives no economic benefit from expedited and emergency orders.

In most cases, prices for commodities and services are at a premium when there is not proper time allowed for the Purchasing Department to explore sources, options and alternatives.

Requisitions for expedited purchases are handled differently than routine purchases. There are two classes of expedited purchases:

- a. Purchases required within three days to prevent unacceptable work slow downs or service deficiencies; or
- b. purchases required immediately to prevent actual work stoppages or service interruption.

Expedited purchases are not emergency purchases. They are for items needed quickly to prevent costly delays and, therefore, warrant the additional cost and effort caused by the interruption of the normal work routine. However, they are not to be used unless absolutely required.

Note: For all expedited or emergency purchases must be competitively bid under normal circumstances, an emergency must be declared and an exemption granted by Commissioners' Court in order to bypass the competitive solicitation process.

2. Expedited Purchases:

NOTE: No expedited purchase order will be issued without an approved requisition. Expedited requisitions must have a written explanation of the need for an expedited purchase.*

3. Requisitioning Procedures:

a. Standard Expedited or Rush Order:

- (1) The requisition is prepared according to normal procedures.
- (2) The preparer should then notify Purchasing by telephone, specifying that an expedited requisition is being delivered to Purchasing. Give Purchasing all available details.
- (3) Obtain required signature approvals or electronic authorizations.
- (4) Hand-carry or transmit the requisition to Purchasing. Purchasing makes the purchase in accordance with competitive bidding or non-bid purchase procedures.

b. Urgent Expedited Order:

If the purchase is required immediately to prevent actual work stoppages or service interruptions, the following procedures are required:

- (1) The requisition is prepared according to normal procedures.
- (2) The preparer should then notify Purchasing by telephone, specifying that an urgent, expedited requisition is being delivered to Purchasing. Give Purchasing all available details.

- (3) Purchasing begins the purchase process upon receiving the telephone call and makes the purchase when the requisition is received in the Purchasing Department in accordance with normal procedures.

4. Emergency Purchases:

Texas statutes generally allow the local government to make emergency or exempted purchases without competitive bidding. (Local Government Code 262 or 271). The Court must approve exempted purchases.

A county is generally exempted from competitive bidding if:

- a. in case of a public calamity, the prompt purchase of items is required to provide for the needs of the public or to preserve the property of the political subdivision;
- b. the item is necessary to preserve or protect the public health or safety of residents of the political subdivision; or
- c. the item is made necessary by unforeseen damage to public property.

5. For counties, the exemption must be granted by the commissioner's court.

*The written explanation must include either of the following statements according to the circumstance:

1. Standard Expedited Order: The purchase of these goods or services are required in order to prevent unacceptable work slow downs or deficiencies; or
2. Urgent Expedited Order: The purchase of these goods and services are required to prevent actual work stoppages or service interruptions.

If the purchase would normally require competitive bidding, the using department must prepare an Emergency Declaration for presentation to Commissioners Court on the next court date.

D. PROCEDURE FOR MAKING EMERGENCY PURCHASES FOR ITEMS OVER THE STATUTORY AMOUNT:

1. Qualification. The purchase must qualify as an exempted purchase under the requirements for exemption listed in Local Government Code Chapter 262 at Section 262.024 (a) (1), (2) and (3). (See VI.C.4 above, "Emergency Purchases" and the exemptions described in a., b. and c. of that sub-section.)
2. Designation. The designation of emergency purchase indicates a situation of such urgency that the normal purchasing procedure must be modified in the interest of speed and, therefore, no competitive bids are required if the Commissioners' Court has previously granted an exception for the item pursuant to Section 262.024, Local Government Code.
3. Normal Working Hours. All emergency purchases occurring during normal working hours are processed through the purchasing department as follows:
 - a. The using department will notify the purchasing office by telephone immediately, with as much information as possible about the emergency purchase required, so that the purchasing action can be initiated immediately.

- b. Simultaneously, a purchasing requisition is prepared by the using department and delivered to Purchasing, along with a written declaration of emergency.
 - c. If the cost of the purchase will exceed the statutory amount, the proposed purchase shall be submitted to Commissioners' Court for approval as an exempted purchase.
 - d. The Purchasing Department or using department head contacts as many vendors as necessary to arrange the emergency purchase. If time permits, the purchase order is completed according to normal procedures. Otherwise, the purchase is completed by telephone and the purchase order is completed after-the-fact and delivered to the vendor.
 - e. The buyer requests expedited delivery. The person making the requisition may be required to pick up the emergency purchase from the vendor if expedited delivery is not available.
4. Evenings, Weekends and Holidays. For other than normal working hours, when purchasing support is unavailable, emergency purchases that are not subject to competitive bidding requirements (less than statutory amount) as follows:
- a. The responsible official of the using department takes whatever steps are necessary to procure needed supplies, services or equipment to relieve the emergency situation. If possible, only those goods or services needed during the evening, weekend or holiday are procured.
 - b. On the first working day following the emergency, the responsible official prepares a requisition and delivers it to the purchasing office, as described above. Attach the invoices, bills of materials, receipts or other documents related to the purchase to the requisition.
5. The official in charge of the using department must certify in writing on the next business day, or as soon thereafter as possible, that the purchase involved was necessary because of one of the reasons listed in Local Government Code 262.024(a)(1), (2) or (3). A copy of the required written Declaration of Emergency is included in this package. (See Appendix III)

E. PROCEDURE FOR SOLE SOURCE PURCHASES:

Sole source purchases are handled the same as other purchases, with the following exceptions:

- 1. If the requisitioning party determines that the item is a sole source purchase, they must attach a statement to the requisition that only one practical source of supply exists, or state the reasons why only one source of supply exists. The requisitioning party must also include a statement explaining why only one particular item or model will fulfill their needs.
- 2. The requisition is then completed in the normal fashion.
- 3. If the Purchasing Director determines that the item is a sole source purchase, he/she will sign the justification.
- 4. All sole source purchases should be approved by the Purchasing Director. The approval should be done before a purchase order is issued.

5. For orders exceeding the statutory amount, Commissioners' Court must receive a signed justification from the requisitioning party stating that the purchase can be obtained from only one source (see Appendix II), and then must enter an order approving an exemption of the purchase as a sole source purchase at a Commissioners' Court meeting.
6. After the requisition is approved, the purchase order is prepared.

NOTE: Please see justification for proprietary or non-competitive purchase form. This form shall serve as the sole source justification statement that will be submitted to Commissioners' Court.

The requisitioner will send the form to the Purchasing Director for review and approval. The Purchasing Director will present the justification to the next Commissioners' Court meeting. The requisitioner shall attend the meeting and be available for any questions from the Court.

F. INTERNAL REPAIRS BY OUTSIDE VENDOR

Bids or quotes are not required for internal repairs (to County owned equipment) that cannot reasonably be defined prior to an actual repair and are less than the statutory amount. Otherwise, the Purchasing Office will obtain quotes.

CAUTION: By definition an internal repair must contain vendor labor and may include parts also.

To complete an internal repair, the using department should complete a requisition reflecting an estimated cost. Purchasing will issue a repair purchase order. After the repair is complete, the department may need to submit a revised requisition, within (24) hours, to Purchasing, reflecting the actual cost of the repair.

VII. INVOICES:

- A. The invoice is an itemized statement of merchandise delivered or services rendered and is a guide for the County in settling financial obligations incurred. Invoices are based upon purchase orders and, therefore, should contain the same information. Any difference between the invoice and the purchase order should be resolved with the vendor immediately and always before payment.

NO PAYMENT EXCEEDING THE COSTS SHOWN ON THE PURCHASE ORDER IS PERMITTED.

- B. Information an invoice should contain:
 1. The purchase order number.
 2. An itemized list of merchandise received or services rendered.
 3. The prices, terms, quantities and other pertinent information on the purchase order.
 4. Charges for delivery, freight, etc., must be listed separately.

VIII. INSPECTING, TESTING, RECEIVING, AND PAYMENT:

- A. All equipment, materials and supplies received need to be inspected by, or under the supervision of, the department head to determine whether or not they conform with the specifications set forth in the purchase order or contract. This requirement will be delegated by the department head to personnel qualified to perform such inspections.

- B. Upon receipt of merchandise, and after inspection and testing, the receiving agent will show, via PeopleSoft, the receipt certifying that specifications were met and requesting payment of the invoice.
- C. If the receiving department refuses to accept the merchandise because of a failure to meet the specifications, they will immediately contact the purchasing department, and state their reasons for withholding acceptance. The purchasing department will then take immediate action to compel replacement by the vendor, cancel the order, or otherwise take action to supply the department with the needed merchandise.
- D. If partial shipments are received, purchasing department should be notified immediately. Purchasing can then contact the supplier to determine the reason for delay and the date of delivery of the balance of the order.
- E. If an instance arises requiring outside testing laboratories to be utilized, the necessary arrangements will be made by the County Purchasing Director. Payment for testing will normally be made from the requesting department's budget. If the test reveals non-spec materials have been supplied, the vendor will pay for the testing or face possible disqualification from future bidding.
- F. If an invoice price exceeds the purchase order unit price, the auditor's office may pay the amount specified on the purchase order unit price and reject the balance. If the unit invoice price is lower than the purchase order unit price, the Auditor may pay the lower price.
- G. If an overage is received, the overage must either be returned to the vendor or a requisition must be issued by the end user if the end user wishes to keep the overage.

IX. THE FORMAL COMPETITIVE FORMAL SOLICITATION (BIDS AND PROPOSALS) PROCESS:

- A. The County Purchasing Director is the chief coordinator and operator of the formal solicitation system (bids and proposals).
- B. The County Purchasing Director shall:
 - 1. Seek Commissioners' Court authorization to advertise for offers, with the responsible department head present should any Court member have questions or comments.
 - a. Any departmental request for submission to Commissioners' Court needs to be received in Purchasing 2 days prior to the scheduled deadline set by the County Judge's office.
 - b. Requests for permission to advertise for bids must contain competitive specifications. Sole source documentation is required if specifications restrict product to one supplier or manufacturer.
 - 2. Prepare, with technical assistance (specification preparation) from the responsible department head, the solicitation package.
 - a. Specifications shall be prepared by the requisitioning department. Specifications shall provide for and encourage the maximum amount of competition possible. Specifications should be broad enough to fit at least three (3) different products, if possible. If specifications restrict product to one supplier or manufacturer, a sole source justification must be attached to the specifications by the department.

3. Submit bid specifications or work statement to Commissioners' Court for approval. If the desired product is only available from one (1) vendor or manufacturer, the end user needs to submit a sole source justification along with the specifications.
4. Advertise as required by law.
5. Distribute solicitation packages.
6. Open the offers on the proper date at the indicated time.
7. Prepare analysis of bids. Obtain signed concurrence of selection from user department head.
8. Consult with department heads and/or advisory committee and submit recommendations and analysis to Commissioners Court.
9. In concert with the District Attorney, prepare contracts, if required.
10. Notify successful bidder and obtain signed contract, if applicable.
11. Advise requesting department head when the above have been completed and prescribe receiving and inspection procedures to be used.
12. Issue the purchase order.

X. BEST VALUE PROCUREMENT POLICY:

Best value procurement is a technique used in a competitive solicitation process which emphasizes life cycle value and permits the evaluation of criteria such as qualifications, experience, operating costs, on-going maintenance, expected life, reliability and other performance data to determine the best overall value of a product or service to an agency. The total life cycle cost of a product or service is assessed, rather than awarding a product or service on low bid alone.

Chapter 262, section 262.030 of the Texas Local Government Code as well as Chapter 2269, section 2269.055 of the Texas Government Code give the County the ability to utilize factors other than price in making award determination.

Local Government Code, Chapter 262, Purchasing and Contracting Authorities of Counties:

Section 262.030 Alternative Competitive Proposal Procedure for Certain Goods and Services

a) Except for Subsection (d) of this section, the competitive proposal procedure provided by this section may be used for the purchase of insurance, high technology items, and the following special services:

- (1) landscape maintenance;
- (2) travel management; or
- (3) recycling.

(b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

(c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

(d) A county in which a purchasing agent has been appointed under Section 262.011 or employed under Section 262.0115 may use the competitive proposal purchasing method authorized by this section for the purchase of insurance or high technology items. **In addition, the method may be used to purchase other items when the county official who makes purchases for the county determines, with the consent of the commissioners court, that it is in the best interest of the county to make a request for proposals.**

(e) As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

Texas Government Code, Chapter 2269, Section 2269.055, Contracting and Delivery Procedures for Construction Projects, Criteria to Consider

(a) In determining the award of a contract under this chapter, the governmental entity may consider:

- (1) the price;*
- (2) the offeror's experience and reputation;*
- (3) the quality of the offeror's goods or services;*
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;*
- (5) the offeror's safety record;*
- (6) the offeror's proposed personnel;*
- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and*
- (8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.*

X1 CREDIT APPLICATIONS

All credit applications will be completed by the County Auditor.

XII PROJECT MANAGEMENT

The department head or their designee shall perform project management duties.

Project management duties include monitoring the contractor or vendor to ensure compliance with the specifications, statement of work and terms/conditions of the contract. The project manager should work with the vendor to correct any problems that arise with contractor performance.

It is imperative to document, in writing, all instances of performance issues and to document communication with the contractor.

If contractor fails to correct performance issues, the project manager may contact Purchasing to take corrective action, including contract termination.

XIII ENVIRONMENTAL POLICY:

1) Purpose:

The purpose of the environmental purchasing policy is to support the purchase of recycled products as well as to recycle County-owned surplus products for reuse when practical and possible. The Purchasing Department recognizes that purchasing recycled products not only reduces waste, but can also generate cost savings to the County. The goal of this policy is to encourage the use of recycled products in procurement decisions while still maintaining the ongoing goal of cost savings.

2) Policy:

While still maintaining maximum cost savings, performance, safety and availability, the Brazoria County Purchasing Department will make efforts to find ways to reuse and recycle surplus, reduce waste and to procure recycled products in order to minimize environmental impacts. The Purchasing Department will work with vendors and provide our user departments with information to facilitate their purchase of environmental friendly products when feasible. Purchases utilizing federal funds will comply with 2 CFR 200.322.

3) Goals to reduce, reuse and recycle:

Purchase of remanufactured toner and ink cartridges:

Goal is to purchase 50% of our overall toner spend by purchasing remanufactured toner instead of OEM toner.

Purchase of remanufactured computer/printer parts.

Encourage the consolidation of orders and the purchase of bulk items for Brazoria County and with other governmental entities in order to reduce delivery costs and to reduce fuel emissions.

Contract for scrap metal disposition/recycling

Purchase recycled landscape supplies such as recycled tire mulch

Ongoing surplus computer donations to Texas Department of Criminal Justice

Encourage departments to reuse furniture and office equipment held in surplus in order to avoid purchasing new.

Hold an annual "office supply swap" between departments. Goal is to have at least one office supply swap per year and to find departments who can use the surplus office supplies not needed by another department. Whatever is left, the Purchasing Department will sell in auction, after court approval.

Purchase of natural janitorial paper products instead of bleached white paper, as well as the purchase recycled printed business envelopes. Goal is to purchase at least 25% of janitorial paper products as unbleached and to purchase 80% of printed business envelopes as recycled.

XIV FEDERAL AND HOMELAND SECURITY FUNDS

The County Purchasing Department shall verify debarment status of all vendors prior to utilizing Federal and Homeland Security funds, using the EPLS system (<https://SAM.gov>).

XV. PROCEDURES FOR DOCUMENTATION OF DEBARMENT:

To ensure a vendor is not under debarment, the county purchaser or their agent must:

- A. Go to the <https://www.SAM.Gov> website

- B. The County Purchaser or their agent, or the agent’s designee, will search the EPLS System for the vendor.
- C. If the vendor is found to be debarred, the vendor may not be used for procurement utilizing Homeland Security Grant Funds.
- D. If the vendor is found not to be debarred, print the screen page and retain with procurement documentation.
- E. A copy of the screen print indicating the vendor is not debarred, at the time of the procurement, must be included with the supporting documentation submitted to the Texas Homeland Security State Administrative Agency requesting reimbursement or advance or to the applicable federal funding agency.

XVI PROCUREMENT CARD PROCEDURES

A. INTRODUCTION

A Brazoria County Procurement (“P”) Card, which is a MasterCard issued by CitiBank, may be assigned to an employee / department to assist in procuring supplies and/or services in the event of a declared disaster or emergency situation:

- 1) when a purchase order cannot be attained expeditiously

A Procurement (“P”) Card may also be assigned to the Brazoria County Public Information Officer for payment of emergency and non-emergency notifications to the public using social media, including Facebook.

Texas Local Government Code 262.011 defines a person “who is authorized by the county purchasing agent to use a county purchasing card while making a county purchase is considered an assistant of the county purchasing agent to the extent the person complies with the rules and procedures prescribed for the use of county purchasing cards as adopted by the county purchasing agent under Subsection (o)”. Section (o) states that “The county purchasing agent shall adopt the rules and procedures necessary to implement the agent’s duties under this section subject to approval by commissioners’ court.”

B. RECEIVING A PROCUREMENT CARD

Before a Procurement Card is assigned, the Cardholder User Agreement shall be signed by the cardholder, as well as by their respective Department Head.

C. AUTHORIZED CREDIT CARD USE

- 1. The unique procurement card that the cardholder receives has his/her name embossed on it and shall be used ONLY by the cardholder.
- 2. Lost or stolen cards, as well as any fraudulent charges found on the procurement card statement, shall be reported immediately to the County Purchasing Agent.
- 3. The total value of a single transaction for goods/services shall not exceed \$3,500.00. Payment for a purchase must not be split up into multiple transactions to stay within the not to exceed limit.
- 4. Cardholder shall inform the vendor that goods/services are tax-exempt. If needed, a tax-exempt form can be obtained from the Purchasing Department or the Auditor’s Office.

D. CARDHOLDER RECORD KEEPING

Documentation, such as a charge receipt or a confirmation statement, shall be retained by the cardholder as proof of the purchase. Prior to signing a receipt, the cardholder is responsible for making sure the vendor lists the quantity and description on the receipt. Such documentation will be used to verify the purchases

listed on the cardholder's monthly statement of account and must contain specific information of each item purchased.

E. REVIEW OF MONTHLY STATEMENT

At the end of each billing cycle, the cardholder shall retrieve his/her monthly statement of account that will list the cardholders transactions for that period.

The cardholder shall check each transaction listed against any receipts, confirmations and shipping documents, to verify the monthly statement.

The original sales documents for all transactions listed on the monthly statement must be attached to a printout of the monthly statement.

After this review, the cardholder shall sign and present the monthly statement to his/her supervisor for approval and signature. The monthly statement, with attached documentation, shall then be forwarded to the Auditor for payment.

The following shall be checked against the statement:

- 1) Receipts exist for each purchase.
- 2) The goods or services were satisfactorily received.

XVII FEDERALLY FUNDED CONTRACTS - PROCUREMENT STANDARDS

General Procurement Standards

Depending on the specific funding source of the procurement request, solicitation efforts by Brazoria 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 affect or may affect procurement requirements and mandate various contract terms. The foregoing listing is not exhaustive.

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

Sections 2 C.F.R. §§ 200.318- 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 follow:

2 C.F.R. §200.318. General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

- (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.213 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
 - (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
 - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk.

Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

2 C.F.R. § 200.319. Competition.

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure

maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

2 C.F.R. § 200.320. Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

- (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
- (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (i) A complete, adequate, and realistic specification or purchase description is available;
 - (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (2) If sealed bids are used, the following requirements apply:
 - (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (v) Any or all bids may be rejected if there is a sound documented reason.
- (d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (2) Proposals must be solicited from an adequate number of qualified sources;
 - (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

2 C.F.R. §200.321. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

2 C.F.R. §200.322. Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where

the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2 C.F.R. § 200.323. Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E-Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

2 C.F.R. § 200.324. Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
 - (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
 - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

2 C.F.R. § 200.325. Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2 C.F.R. § 200.326. Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200-Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

2 C.F.R. Part 200, Appendix II:

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) Remedies-

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual,

or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

The following is included in formal procurement solicitations:

“If the bidder/vendor fails to comply with the terms and conditions of this Agreement, Brazoria County may take one or more of the following actions, as appropriate to the circumstance:

- (a) Temporarily withhold payments pending the bidder/vendor commencing in good-faith corrective action to cure the deficiency;
- (b) Permanently withhold payments; and/or
- (c) Take any and all other remedies that may be legally available.

(B) Termination for Cause and Convenience-

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.

The following is included in formal procurement solicitations:

Termination with Cause:

“Upon written notice to the Contractor of a defect or breach of this Agreement, Contractor has five (5) business days to cure any defect(s) or breach(es) cited in said notice. If Contractor fails to cure the defect(s) or breach(es) within the five (5) business days allowed, Brazoria County may terminate this Agreement. Nevertheless, Brazoria County reserves the right to provide written notice to the Contractor that this Agreement shall continue if Contractor has in good-faith commenced efforts to cure said defect(s) or breach(es) and Contractor agrees, in writing, to continue to act without undue delay to cure said defect(s) or breach(es).

Termination Without Cause:

This contract may be terminated by either the County or the Contractor at any time, without cause, by providing the other Party at least thirty (30) calendar days' prior written notice.

(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."

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.

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."

(D) Davis-Bacon Act and Copeland Anti-Kickback 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.

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 (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 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 the Federal awarding agency.

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. In situations where the Davis-Bacon Act does not apply (for example FEMA Public Assistance recipients and subrecipients), the following contract clause is required:

"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."

(E) Contract Work Hours and Safety Standards Act

Where applicable (see 40 U.S.C. 3701-3708), 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.

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."

[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 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 the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The following provides sample contract clauses 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 Awarding 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 the Federal Awarding Agency.

"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 Awarding 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 the Federal Awarding Agency."

(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 government-wide 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.

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 2C.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."

(l) Byrd Anti-Lobbying Amendment (31U.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 31U.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.

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."

Purchasing Department shall require the following to be submitted with each bid or offer exceeding \$100,000.00:

CERTIFICATION REGARDING LOBBYING

Certifications For Contracts, Grants, Loans, And Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, 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 within this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant / Organization

Date Signed

(J) 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, 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, 1f); 2 C.F.R. § 200.322; PDAT Supplement, Chapter V, 1f 7.

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.

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 designate items, is available at EPA's Comprehensive Procurement Guidelines

Additional FEMA Requirements

(Note: These may also pertain to other funding sources. Purchasing Department will check with the applicable funding agency to see which of the following may apply or if there are other applicable requirements of the funding agency which shall be included in the contract 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, 1f 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, 1f 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 with 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 31 U.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."

Energy Conservation 42 U.S.C. 6321 et seq./49 CFR Part 18

The following provides a contract clause regarding Energy Conservation:

"The contractor agrees to comply with 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."