



# Jefferson County Purchasing Department

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## **POLICIES and PROCEDURES MANUAL**

### **JEFFERSON COUNTY PURCHASING BOARD:**

Judge John Stevens, Criminal District Court  
Judge Kent Walston, 58<sup>th</sup> District Court  
Judge Baylor Wortham, 136<sup>th</sup> District Court  
Commissioner Cary Erickson, Pct. 2  
Commissioner Everette "Bo" Alfred, Pct. 4

### **COUNTY COMMISSIONERS:**

Commissioner Eddie Arnold, Pct.1  
Commissioner Cary Erickson, Pct. 2  
Commissioner Michael Sinegal Pct. 3  
Commissioner Everette "Bo" Alfred, Pct. 4

Jeff R. Branick  
**JEFFERSON COUNTY JUDGE**

Deborah L. Clark  
**PURCHASING AGENT**

Mistey Reeves  
**ASSISTANT PURCHASING AGENT**

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**EFFECTIVE: June 2024**

### **Jefferson County Purchasing Department**

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Jefferson County Purchasing Department

## Welcome to Jefferson County Purchasing

Purchasing is an essential County government business function. Purchasing activities, which are expenditures made to the private sector for the purchase of goods and services result in the second largest expenditure of taxpayer dollars. The largest expenditure is paid out in the form of employee wages, salaries, and benefits.

The integrity and efficiency of the County Purchasing process is a crucial component of its credibility. More public officials have been criticized for real or perceived conflicts of interest in the spending of public funds than for any other financial activity. Even with the knowledge of such potential criticism, public officials often misunderstand Purchasing's significant budgetary and public relations importance.

The mere perception of public officials misusing the Purchasing process for personal or political gain threatens the public's confidence in its government. Therefore, the Commissioners' Court, all public officials, and the Purchasing Agent must ensure a high standard of professional ethics in all personnel who participate in or who can influence those involved in making Purchasing decisions.

The relationship between the Purchasing Agent and Commissioners' Court is a unique one. On the one hand, the Purchasing Agent performs a customer service function for Commissioners' Court and is responsible for ensuring that all County offices have the goods and services they need to perform the essential functions of their missions. On the other hand, the Purchasing Agent performs an expenditure control function which is the responsibility of supervising the Commissioners' Court's contracting authority and ensuring compliance with the County Purchasing Act. This relationship lends credence to the notion that the Purchasing Agent be an independent officer of the County.

This manual is intended to provide elected officials and employees with a basic understanding of Purchasing activities, the County Purchasing Act, and the role of the Purchasing Agent. It also offers good business reasons for the centralization of the County Purchasing functions and offers professional Purchasing principles for Public Officials committed to improving government operations.



Deborah L. Clark, Purchasing Agent  
Jefferson County, Texas

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## **SECTION 1: INTRODUCTION**

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### **A. PURPOSE**

The purpose of this Policies and Procedures Manual is to serve as a source of instruction to all County Departments and Employees regarding the Purchasing Policies and Procedures of Jefferson County, Texas. The adoption of this Purchasing Manual and the approval of any subsequent revisions by Jefferson County Purchasing Board shall authorize the policies and procedures contained herein for official use in County Business.

### **B. SCOPE**

The scope of this manual includes all Departments under the jurisdiction of Commissioners' Court, as well as all purchasing transactions that are paid for directly from County Funds under the control of Commissioners' Court.

### **C. DISTRIBUTION**

This manual will be distributed to all County Departments and to all County Employees involved in the purchasing process. The Purchasing Department shall be responsible for distributing copies of this manual to all appropriate parties.



## **SECTION 2: IMPLEMENTATION**

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The Purchasing Agent shall be responsible for implementing and enforcing the policies and procedures set forth in this manual.

- Each Elected Official/Department Head shall be responsible for implementing and enforcing these Policies and procedures within their respective agencies.
- The Purchasing Agent, as head of the Purchasing Department, shall exercise functional authority over the County Purchasing Process for the purpose of implementing and enforcing these policies and procedures on a countywide basis, as well as in the Purchasing Department for its role in the process.
- A violation of any of the policies and procedures in this manual may be grounds for disciplinary action. In addition, a violation may result in the County's refusal to pay for any improperly ordered good or service.
- The Commissioners' Court shall have the authority, in specific cases determined to be exceptional, to waive or override the policies and procedures in this manual and to direct a different handling of each such case.

### **SECTION 3: REVISIONS**

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This manual is to serve as a permanent and up-to-date guide to County Purchasing Policies and Procedures. As necessary changes are made in policies and procedures, appropriate revisions will be made. The Purchasing Department shall be responsible for accurately maintaining this manual and for distributing revisions to all appropriate parties.

Responsible County Employees are encouraged to make recommendations on sections of this manual that, due to changing conditions, may need revision. Also, they are encouraged to make recommendations on new subjects not currently included in the manual.

Any such recommendation should be submitted through appropriate organizational channels to the Purchasing Agent for review and consideration.

The Purchasing Agent shall be responsible for approving revisions to this manual.

## **SECTION 4: PURCHASING AUTHORITY AND POLICY**

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### **A. APPOINTMENT OF THE PURCHASING AGENT**

As outlined in the Texas Local Government Code §262.011(a), the Jefferson County Purchasing Agent is appointed by and accountable to a Board comprised of three (3) District Judges and two (2) members of the Commissioners' Court. The Purchasing Board appoints the Purchasing Agent for Jefferson County to a two-year term and approves the budget for the Purchasing Department, including the Purchasing Agent's salary.

### **B. PURCHASING AUTHORITY OF THE COMMISSIONERS' COURT**

The authority of Texas counties to purchase one or more items under a contract that will require expenditures exceeding \$50,000 rests with the Commissioners' Court. The Commissioners' Court shall make their awards in compliance with the competitive bidding or competitive proposal procedures prescribed by the County Purchasing Act (Texas Local Government Code §262.023(a) (c)).

### **C. DUTIES AND AUTHORITY OF THE PURCHASING AGENT**

The Purchasing Agent's authority is derived from statutes, delegation of the Commissioners' Court, and direction of the Purchasing Board. The statutory duties of the Purchasing Agent include the following as prescribed by Texas Local Government Code §262.011.

### **D. AUTHORITY**

The Purchasing Agent shall purchase all supplies, materials, and equipment, and shall contract for all repairs to property used by the County, department, or employee (with the exception of purchases and contracts required by law to be made by competitive bid). **A person other than the Purchasing Agent may not make the purchase of the goods or make the contract for repairs.** The Purchasing Agent shall supervise all purchases made on competitive bids and shall see that all purchased goods are delivered to the proper department in accordance with the purchase contract.

A purchase made by the Purchasing Agent shall be paid for by a warrant drawn by the Jefferson County Auditor on funds in the County treasury in the manner provided by law (Texas Local Government Code §262.011).

### **E. VIOLATION AND PENALTY**

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 Texas Local Government Code §262.023. An offense under this subsection is a Class B misdemeanor.

### **F. ADDITIONAL RESPONSIBILITIES OF THE PURCHASING AGENT**

The Purchasing Agent, by direction of the Purchasing Board, is responsible for the following:

- The Purchasing Agent shall prepare bid or proposal specifications for all materials, supplies, and equipment for Commissioners' Court approval; and shall be responsible for subsequent solicitation and evaluation of formal bids and proposals for any item or items under a contract that would require expenditure in excess of \$50,000.00.

- The Purchasing Agent shall supervise the employees and operations of the Purchasing and Printing Departments.
- The Purchasing Agent shall, by direction of the Purchasing Board, make all purchases of supplies and materials for Jefferson County Adult Probation Services and the Jefferson County Restitution Centers. For purchases under contracts requiring expenditures in excess of \$50,000, formal bids shall be received by the Purchasing Agent, who shall present them to the Commissioners' Court for approval and then shall award the contract to the responsible bidder who submits the lowest and best bid.

## **SECTION 5: INVENTORY**

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On July 1 of each year, the County Purchasing Agent shall file with the County Auditor and each member of the Board that appoints the County Purchasing Agent an Inventory of all property on hand and belonging to the County. The Auditor shall carefully examine the inventory and make and accounting for all property purchased or previously inventoried and not appearing on the inventory.

### **A. TRANSFER OF ASSETS**

Upon approval from the Commissioners' Court, and in accordance with Texas Local Government Code §262.011(j), the Purchasing Agent shall transfer supplies, materials, and equipment which are no longer needed or used from a department or employee to another department or employee requiring the goods or the use of the goods. The Purchasing Agent shall furnish to the Auditor a list of transferred goods.

### **B. SURPLUS/SALVAGE PROPERTY**

The Purchasing Agent, acting for Commissioners' Court, shall dispose of surplus or salvage property following the procedures outlined in Texas Local Government Code §263.152.

## **SECTION 6: JEFFERSON COUNTY PURCHASING POLICY**

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### **The Jefferson County Purchasing Policy is to:**

- Seek the best quality, lowest priced goods and services that meet the needs of the County and its personnel;
- Provide all responsible Vendors and Contractors with equitable access to servicing the needs of Jefferson County and its personnel through competitive acquisition of goods and services;
- Comply with all Federal and State Laws that apply to County purchasing and comply with the policies and procedures outlined in this manual;
- Manage County assets and inventory so that replacement costs are minimized and the County can account for all assets; and
- Dispose of all surpluses, salvage, seized, and abandoned property in a manner that both provides the most benefit to the taxpayers of Jefferson County and complies with the law.

## SECTION 7: THE PURCHASING ACT

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### The Purchasing Act, Texas Local Government Code §262.023 reads:

“(a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$50,000, the Commissioners’ Court of the County must

- (1) Comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter;
- (2) Use the reverse auction procedure, as defined by Section 2155.062, Government Code, for purchasing; or
- (3) Comply with a method described by Chapter 2269, Government Code.

“(b) The requirements established by Subsection (a) apply only to contracts for which payment will be made from current funds or bond funds or through anticipation notes authorized by Chapter 1431, Government Code, or time warrants. Contracts for which payments will be made through certificates of obligation are governed.

(b-1) A county that complies with a method described by Chapter 2269, Government Code, as provided by Subsection (a)(3), to enter into a contract for which payment will be made through anticipation notes authorized by Chapter 1431, Government Code, may not issue anticipation notes for the payment of that contract in an amount that exceeds the lesser of:

- (1) 20 percent of the county’s budget for the fiscal year in which the county enters into the contract; or
- (2) \$10 million”

“(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. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.”

The Purchasing Act applies to all departments: all District, County, and Precinct officials and employees and all subdivisions of all District, County, and Precinct offices.

The Purchasing Department must do all of the purchasing for all elected officials, County department heads, and employees.

## **SECTION 8: PURCHASING DEPARTMENT POLICIES**

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### **A. SPECIFICATIONS**

Specifications, which shall be the basis of sealed bids or sealed proposals submitted to the Purchasing Agent, shall be written to allow for competitive bidding. The Purchasing Agent shall not write and/or approve the release Invitation for Bid (IFB) / Request for Statement of Qualification (RFQ) / Request for Proposal (RFP) specifications which, by design, exclude legitimate competitors. The specifications shall not use brand names unless a disclaimer is included opening the opportunity to respond to competing brands of approved equal quality.

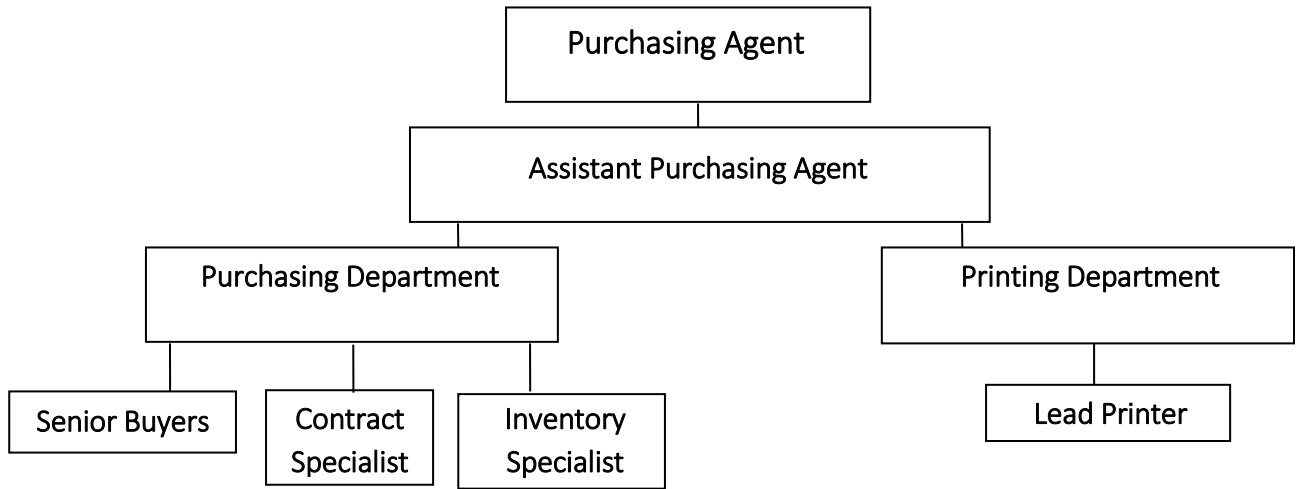
### **B. SELECTION OF VENDORS**

In the case of formal competitive bids or proposals, informal bids and informal proposals, the evaluation of bids and proposals and the selection of Vendors shall be done with a view to obtain the best value for the money spent. Therefore, the Vendor selected will be the bidder who submits the lowest and best bid. While “lowest” is self-explanatory, “best” is not. “Best” in this context means that which most completely conforms to specifications and is submitted by a responsible bidder.



**SECTION 9: PURCHASING DEPARTMENT ORGANIZATION CHART**

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## **SECTION 10: EFFECTIVE DATE OF POLICIES AND PROCEDURES**

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The Policies and Procedures as described within this manual shall become effective upon approval by the Jefferson County Purchasing Agent.

## **SECTION 11: PRECEDENTS AND INTERPRETATION**

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These policies and procedures shall be construed liberally to accomplish their purpose.

If there is any conflict between the policies and procedures and a County law, or a rule adopted under a County law, the stricter of the two provisions prevails.

The masculine, feminine, and neuter genders shall be construed to include the other genders as required.

The singular and plural shall be construed to include the other number as required. Headings and titles at the beginning of the various sections of these policies and procedures have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing these policies.

If any provision of these policies and procedures or the application of them to any person or circumstances is held invalid, the validity of the remainder of these policies and procedures and the application of them to other persons and circumstances shall not be affected.

In general, the Purchasing Agent interprets these policies and procedures, but the Commissioners' Court shall resolve any question regarding any interpretation of these policies and procedures when there is a conflict related to an area that is not within the statutory authority of the Purchasing Agent.

## SECTION 12: JEFFERSON COUNTY PURCHASING CODE OF ETHICS

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A special responsibility is imposed on all people who are entrusted with the disposition of the County's funds. As purchasing personnel, we are required to perform with the highest integrity while we are constantly being asked to manage more effectively, to secure better economic results, to speed up the process, and to be innovative in accomplishing our mission. This is a great challenge and an exciting one!

Jefferson County Purchasing Department employees are entrusted with the safety and welfare of the citizens. In return for their confidence in County government, citizens expect that County employees' private interests will not conflict with public business.

The nature of purchasing functions makes it critical that all players in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules, and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system. Any erosion of honesty, integrity, or openness tends to be more injurious to purchasing than to most other public programs. The shadow of doubt can be as harmful as the conduct itself. It is with this in mind that the following policies and procedures are set forth.

**A County employee may not:** Participate in work on a contract by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action knowing that the employee or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment; solicit or accept anything of value from an actual or potential vendor; be employed by, or agree to work for, a vendor or potential vendor; knowingly disclose confidential information for personal gain; or

**A Vendor or Potential Vendor may not:** Offer, give, or agree to give an employee anything of value;

**If a violation occurs:** When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with the Purchasing Agent. The person may also request written instructions and disposition of the matter.

If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The Vendor or potential Vendor may be barred from receiving future contracts and/or have an existing contract canceled.

## SECTION 13: GENERAL PURCHASING POLICY

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**GENERAL INFORMATION:** Jefferson County will not be obligated to purchase goods that are delivered for use on a trial basis.

The following purchasing strategies that are made with the intention of circumventing the Purchasing Act (formal competitive bidding procedures) are **in violation of the law** (Texas Local Government Code §262.023):

### **A. COMPONENT PURCHASES**

Purchasing a series of component parts of goods which normally would be purchased as a whole.

### **B. SEPARATE PURCHASES**

Purchasing goods and services in a series of separate purchases, which in normal purchasing practices would have been purchased in one purchase.

### **C. SEQUENTIAL PURCHASES**

Purchases made over a period of time that in normal purchasing practices, would be made as one purchase.

**Any commitment to acquire goods or services without an authorized purchase order is prohibited. Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment.**

**Departments requesting to purchase goods/services not associated with official County business, for example, personal services for individuals such as hair styling, must submit a letter to Commissioners' Court for approval.**

**Employees must not purchase goods or services for their own personal benefit.**

Departments must be cognizant of budget balances and refrain from forwarding purchase requisitions to the Auditing Department that would request expenditures in excess of those balances. Purchase requisitions for which there is not adequate funding will not be processed without the approval of the County Auditor. Departments should plan purchases in order to keep expedited purchase requisitions to a minimum. The County rarely enjoys any economic benefits from rush purchases. In most cases, Vendors attempt to charge prices for goods and services that are a premium when there is not proper time allowed for the Purchasing Department to explore sources, options, and alternatives. The Purchasing Department is committed to processing all purchase requisitions within a reasonable time frame.

**Departments must provide the Purchasing Department ample time to process purchase requests:**

- Departments must assure that all employees responsible for making department requests for purchases have read and understand the purchasing procedures outlined in this manual.
- The Purchasing Department must review all purchase requests to assure they are descriptive and specific but do not prevent competitive bidding of comparable goods. Since there is no central receiving point, each department is responsible for receiving goods and services. Departments should

notify the Purchasing Department of any shortages, late deliveries, damaged merchandise, or any other problems relating to the Vendor's performance.

- Departments should understand and appreciate the nature of public purchasing by reviewing and considering all purchase requests in order to promote competitive bidding.

#### **D. MIS REVIEW OF DATA PROCESSING EQUIPMENT**

The Management Information Systems Department (MIS) will review all purchase requests made by departments for soft and hard data processing equipment. This procedure is to ensure compatibility and standardization.

#### **E. VENDOR DATABASE**

The Purchasing Department maintains a Vendor Database for most products and services purchased by the County. This database is compiled utilizing information obtained from Bidders List Applications submitted by vendors to the Purchasing Department.

The Purchasing Department utilizes this vendor database as a *reference resource* when making direct purchases or preparing Bidder's Lists for bid opportunities.

The Purchasing Department will use reasonable efforts to include appropriate vendors from the Vendor Database in the consideration for direct purchases; as well as for RFP/RFQ/IFB Notifications Lists, *but it has no legal duty to do so.*

Vendors are encouraged to visit the Jefferson County Purchasing webpage (Notice of Bids Section) regularly to stay informed about bidding opportunities that are available.

<https://co.jefferson.tx.us/Purchasing/>

#### **F. BIDDERS LIST/VENDOR DATABASE APPLICATION**

A vendor may obtain a copy of the Purchasing Department's Bidders List Application by submitting a request to the Purchasing Department via telephone (below) **OR** by visiting the Purchasing webpage.

Jefferson County Purchasing Department  
1149 Pearl Street, First Floor  
Beaumont, Texas 77701  
(409) 835-8593 office

**Bidders List Application may be accessed via the Jefferson County Purchasing Department's website at:**

<https://www.co.jefferson.tx.us/Purchasing/>

#### **G. CONTRACT WITH PERSON INDEBTED TO COUNTY**

As outlined in the Texas Local Government Code §262.076

- (a) By an order adopted and entered in the minutes of the commissioners court and after notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules permitting the county to refuse to enter into a contract or other transaction with a person who owes a debt to the county.

- (b) It is not a violation of this subchapter for a county, under rules adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the county.
- (c) In this section, “person” includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the county requiring approval by the commissioners court.
- (d) In this section, “debt” includes delinquent taxes, fines, fees, and delinquencies arising from written agreements with the county.

#### **H. AFTER HOURS/EMERGENCY PURCHASES**

Emergency after-hours purchases may only be made for an item necessary to preserve or protect the public health or safety of the residents of Jefferson County. The Department Head must submit an ICS 213 General Message Form to the Purchasing Agent noting the following information regarding the purchase.

- State the reason for the emergency purchase by explaining what the emergency is and/or what caused the emergency situation;
- State why the needs were not or could not be anticipated so that items could have been requisitioned

#### **I. INTERLOCAL AGREEMENTS**

All Interlocal agreements involving the purchase of goods, repairs, or maintenance agreements must be approved in writing by the Purchasing Agent before being submitted to Commissioners’ Court for approval.

#### **J. BONDING REQUIREMENTS**

##### **BID BONDS**

Bid Bonds will not be required for contracts that are valued at less than \$100,000. Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency. If the Purchasing Agent determines that a bid bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a bid bond in the amount of 5% of the contract price is required and that it must be executed by a surety company authorized to do business in Texas.

##### **PERFORMANCE BONDS**

Performance bonds will not be required for contracts that are valued at less than \$100,000. Performance bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency.

If the Purchasing Agent determines that a performance bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a performance bond in the full amount of the contract price is required. Said performance bond must be executed by a company authorized to do business in Texas before the contractor commences work and within 30 days after the contract award is sent to the contractor.

## SECTION 14: SPECIFICATIONS

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### A. DEFINITION

A specification is a concise description of goods or services that an entity seeks to buy, and the requirements the Vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection, or preparing any goods or services for delivery, or preparing or installing them for use. The specification is the total description of the goods or services to be purchased.

### B. PURPOSE

The purpose of any specification is to provide purchasing personnel with clear guides from which to purchase, and to provide Vendors with firm criteria of a minimum standard acceptable for goods or services.

**A good specification has four (4) characteristics:**

- It establishes the minimum acceptability of the goods or services;
- It promotes competitive bidding;
- It contains provision for reasonable test and inspection for acceptability of the goods or services;
- It provides for an equitable award to the lowest and best bid and/or for the best value to the County from a responsible bidder.

### C. PREPARATION

Specifications, which shall be the basis of sealed bids or sealed proposals submitted to the Purchasing Agent, shall be written to allow for competitive bidding. The Purchasing Agent shall not write or accept specifications which by design excludes legitimate competitors. The Purchasing Agent shall not use brand names unless a disclaimer is included opening the specification to competing brands of equal quality.

Specifications may be proposed by the user department, occupant department, or an outside agency. Acceptance of these specifications, other than those for construction projects, will rest with the Purchasing Department for compliance with legal purchasing requirements. The Commissioners' Court is the final authority for approval of specifications. This will ensure proper quality control and avoid the proliferation of conflicting specifications in the different departments of the County. The Auditor's Office will verify for the Purchasing Agent that the goods and services were considered and approved in the budget process. Any purchases that were not approved in the budget process will be submitted to Commissioners' Court before specifications are prepared and advertised.

### D. TYPES OF SPECIFICATIONS

**There are a number of specification types utilized by the Purchasing Department. These include:**

**DESIGN SPECIFICATION:** A *design specification* is comprised of a detailed description of goods or services, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and all other details needed for the provider to produce goods and services of minimum acceptability. Design specifications are usually required for construction projects, custom produced goods, and for many services.



**PERFORMANCE SPECIFICATION:** A *performance specification* is one in which the goods or services are described in terms of required performance. They may include such details as required power, strength of material, test methods, and standards of acceptability and recommended practices. This type of specification should be used more often for capital equipment.

**BRAND NAME OR EQUAL:** A *brand name or equal specification* lists goods or services by brand name, model, and other identifying specifics, except that products equal to the characteristics of the named brand are specified as acceptable. Usually the composition of a brand named good or service is provided through labeling, but broader tolerances and less consistency from item to item may be expected as compared with standard goods. Other manufacturers may provide a nearly identical good under their own name. The burden of proof of equality rests with the Vendor. Final acceptance rests with the Purchasing Department.

**INDUSTRY STANDARD:** An industry specification is one of the simplest specifications available. All goods made to an industry standard are identical, regardless of manufacturer and will result in acquisition of goods of uniform quality. An example is the UIL standard for electrical products.

## SECTION 15: THE REQUISITION PROCESS

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### A. DEFINITION

A requisition is a formal request for a purchase to be made. It is the first step after the need for goods or services is recognized. The department's purchase requisition authorizes the Purchasing Department to enter into a contract with a Vendor in order to purchase goods or services on the user department's behalf.

### B. HTE SYSTEM

Jefferson County requires all departments to submit requisitions, using the automated requisitioning system commonly referred to as the HTE System. Based on established budget line items, purchase requisitions are entered into the HTE System by the user department. Adequate budget funds **must be available** in the departmental line items before the Purchasing Department can proceed with the purchase of requested goods and services.

After the Purchasing Department receives a purchase requisition, it determines the appropriate purchasing procedures based on the cost of the purchase, the goods and services to be purchased, and the existing contracts for goods and services and other relevant factors.

Specific instructions on entering purchase requisitions into the automated HTE system are not covered in this manual. The user department may contact the Purchasing Department for training. For Departments without access to the (HTE) System or for special accounts a manual requisition may be submitted to the Purchasing Department. This form is for internal use only and cannot be used by a department to order materials directly from a Vendor.

When a requisition is sent to Purchasing, please allow adequate time for orders to be processed. Failure to allow ample time for ordering and delivery can cause problems for Vendors, the Purchasing Department, and for the end user.

### C. TYPES OF PURCHASE REQUISITIONS

The Purchasing Department classifies purchase requisitions according to the type of action and the time required for the purchase.

If total cost is **under \$50,000**, the purchase is handled like an expedited purchase requisition.

If total cost is **over \$50,000**, the purchase must be exempted from the requirements of the Purchasing Act by order of Commissioners' Court. The user department should immediately contact the Purchasing Department so that proper action can be initiated.

### D. DISCRETIONARY EXEMPTIONS

**262.024. DISCRETIONARY EXEMPTIONS.** (a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

- (1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;

- (2) an item necessary to preserve or protect the public health or safety of the residents of the county;
- (3) an item necessary because of unforeseen damage to public property;
- (4) a personal or professional service;
- (5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;
- (6) any land or right-of-way;
- (7) an item that can be obtained from only one source, including;
  - a. items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
  - b. films, manuscripts, or books;
  - c. electric power, gas, water, and other utility services; and
  - d. captive replacement parts or components for equipment;
- (8) an item of food;
- (9) personal property sold:
  - a. at an auction by a state licensed auctioneer;
  - b. at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or
  - c. by a political subdivision of this state, a state agency of this state, or an entity of the federal government;
- (10) any work performed under a contract for community and economic development made by a county under Section 381.004; or
- (11) Vehicle and equipment repairs.

All emergency exemption orders must be processed through the Purchasing Department. The Purchasing Agent will submit the order and agenda item for Commissioners' Court approval.

#### **E. FIELD PURCHASE ORDERS**

Field purchase orders shall be used for the purchase of small sundry items that cost less than \$500.00 (the approved threshold).

Field purchase orders shall be used for a single or aggregate purchase, but only for a single transaction.

Field purchase orders shall not be combined to purchase any item costing more than the approved threshold, and shall not be used in the manner of or in lieu of a blanket purchase order.

Field purchase orders shall be issued and authorized only to designated personnel.

Field purchase orders may be obtained by calling the Purchasing Department between the hours of 8:00 am - 5:00 pm CT, Monday through Friday. Every employee in the Purchasing Department is capable of issuing a field purchase order.

## SECTION 16: PURCHASING DOCUMENTS

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It is important to have a basic understanding of what is meant by “Purchasing Documents.”

These documents describe the full contractual relationship between a County and a supplier of goods or services.

### **Purchasing Documents are:**

- **Solicitations:** include Invitation for Bid (IFB), Request for Statements of Qualification (RFQ), Request for Quotation, and Request for Proposal (RFP). These documents may result in a Binding Contract.
- **Offers:** include bids, proposals, and quotes made by businesses to supply goods or services.
- **Contracts:** final, signed agreements between the government and the supplier to buy/sell.
- **Amendments/Change Orders:** changes to solicitation documents, offers, and contracts.

**Other documents to include in purchase file:** Many other documents are created during the process of making a purchase and are kept in the purchase file, but they are not technically “Purchasing Documents.” *These other documents include:* Requests (requisitions) by Departments/Agencies for purchases of items; notes to the file to explain why a particular course of action was chosen; original specifications from the requesting department; final specifications; bidders notified of solicitations; and copies of advertisements.

## SECTION 17: SYSTEM FOR AWARD MANAGEMENT (SAM) REQUIREMENT FOR VENDORS

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**ALL VENDORS** in a contract with Jefferson County are **strongly encouraged to register** with The System for Award Management (SAM), with an “active” status, with no exclusions.

*Below is an excerpt from SAM.gov:*

The **System for Award Management (SAM)** is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

There is NO fee to register for this site. Entities may register at no cost directly from the SAM website at: <https://www.sam.gov> There is no cost to use SAM.gov.

### **You can use this site to:**

- Register to do business with the U.S. Government
- Update, renew, or check the status of your entity registration
- Search for entity registration and exclusion records
- Search for assistance listings (formerly CFDA.gov), wage determinations (formerly WDOL.gov), contract opportunities (formerly FBO.gov), and contract data reports (formerly part of FPDS.gov).
- View and submit Bio-Preferred and Service Contract Reports
- Access publicly available award data via data extracts and system accounts

### **What is an entity?**

At SAM.gov, we use the term “entity” to refer to prime contractors, organizations or individuals applying for assistance awards, those receiving loans, sole proprietors, corporations, partnerships, and any U.S. federal government agencies desiring to do business with the government. Entity can also refer to a party that has been suspended or debarred, is covered by a prohibition or restriction, or is otherwise excluded from doing business with the government.

### **What are entity registrations?**

You register your entity to do business with the U.S. federal government by completing the entity registration process at SAM.gov. Active registration in SAM.gov provides your entity the ability to apply for federal grants or loans or bid on government contracts.

### **What are exclusions?**

An exclusion identifies a party excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. If your entity or any of its principals are subject to an active exclusion, it means your entity is currently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency. Awarding officials check SAM.gov to see if an exclusion exists for your entity. Always contact the issuing agency if you have questions about an exclusion record. *-End of Excerpt-*

## **DOCUMENTATION OF SYSTEM FOR AWARD MANAGEMENT REGISTRATION:**

### **GRANT-FUNDED PURCHASES:**

For grant-funded purchases, Purchasing Staff will visit SAM.gov to search for the vendor utilizing the “Entity Search” option. Results of the search shall be printed and included with both the Purchasing (pink) and Auditing (yellow) copies of the purchase order.

**ADDITION OF DATE AND INITIALS:** Purchasing Staff shall notate the date and initial the right-hand corner of the SAM Search documentation prior to including with purchase documentation.

### **RFP/RFQ/IFB PURCHASES:**

For RFP/RFQ/IFB purchases, Purchasing Staff shall **strictly enforce** a Proof of System for Award Management (SAM) Registration Requirement for the following types of purchases: Purchases made in accordance with a Request for Proposal (RFP), Request for Statements of Qualification (RFQ), Request for Quotes, Request for Offers, and Invitation for Bids (IFBs).

Per specifications requirements: Respondents to Request for Proposal (RFP), Request for Statements of Qualification (RFQ), Request for Quotes, Request for Offers, and Invitation for Bids (IFBs) are required to provide proof of SAM Registration (printout from the SAM website). This registration should reflect that the vendor is active and free of any exclusions.

Although respondents are required (per specifications) to include proof of SAM registration within their response to an RFP/RFQ/IFB, this status will need to be **confirmed** by the Purchasing Department prior to award and/or execution of agreement or contract.

Within a *reasonable* amount of time *prior to award and/or execution of agreement or contract*, Purchasing Staff facilitating the project will visit the SAM website to obtain Proof of SAM registration. The vendor’s registration should be active and free of any exclusions.

### **PROOF OF SAM DOCUMENTATION SHOULD BE INCLUDED WITH:**

- Purchase Order (pink file copy, yellow copy for Auditing to scan)
- Project File
- P: drive project file

### **IFB/RFQ/RFP RESPONDENTS WITH INACTIVE STATUS OR NO SAM REGISTRATION:**

In instances where a vendor has either an “Inactive” SAM Registration or is not currently registered with the System for Award Management, the Purchasing Department may *initially* accept proof (printout from the SAM website) that the vendor has begun the registration process in order for the IFB/RFQ/RFP submission to be considered as “responsive” to the specifications for the project.

**However, the SAM Registration must be completed (showing “active” status, with no exclusions) prior to the award and/or execution of an agreement or contract for the project.**

## **SECTION 18: TEXAS ETHICS COMMISSION: FORM 1295 (CERTIFICATE OF INTERESTED PARTIES)**

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added [section 2252.908 of the Government Code](#).

The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

### **What contracts apply to Form 1295?**

The law applies only to a contract between a governmental entity or state agency and a business entity at the time it is voted on by the governing body or at the time it binds the governmental entity or state agency, or whichever is earlier, including an amended, extended, or renewed contract, of a governmental entity or state agency that either:

1. **requires an action or vote by the governing body of the entity or agency before the contract may be signed; or**
2. has a value of at least \$1 million, or
3. is for services that would require a person to register as a lobbyist under Chapter 305 of the government Code.

Gov't Code § 2252.908; 1 T.A.C. §§ 46.1(b), 46.3(a). The disclosure requirement applies to a contract entered into on or after January 1, 2016.

### **A contract does not require an action or vote by the governing body of a governmental entity or state agency if:**

1. the governing body has legal authority to delegate to its staff the authority to execute the contract;
2. the governing body has delegated to its staff the authority to execute the contract; and
3. the governing body does not participate in the selection of the business entity with which the contract is entered into. 1 T.A.C. § 46.1(c).

### **What is an Interested Party?**

It is important to note that there are **very few instances** that a business will not have any interested parties.

**An Interested Party is:** a person who has a **controlling interest** in a business entity with whom a governmental entity or state agency contracts; or an **intermediary**.

**Controlling Interest:** An interested party has a controlling interest in the business entity if the interested party meets one or more of the following conditions:

- has an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
- is a member of the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
- serves as an officer of a business entity that has four or fewer officers, or serves as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (c)

of this section does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

**Intermediary Interest:** An interested party has an intermediary interest in a contract if the person actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, advisor, attorney, or representative of or agent for the business entity who meets all of the following conditions:

- receives compensation from the business entity for the person's participation;
- communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- is not an employee of the business entity or of an entity with a controlling interest in the business entity.

#### **FORM 1295 FILING PROCESS:**

Starting on January 1, 2016, the commission made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

The governmental entity (*Purchasing Department*) or state agency must notify the commission, using the commission's filing application of the receipt of the filed Form 1295 with the certification of filing *not later than the 30th day* after the date the contract binds all parties to the contract.

**It is recommended that Purchasing Staff obtain a completed Form 1295: Prior to the Commissioners' Court Award or Authorization of Execution of an Agreement/Contract; or Issuance of a Purchase Order.**

**The TEC Form 1295 Filing Application can be found at:**

<https://www.ethics.state.tx.us/TECCertInt/pages/login/certLogin.jsf>

This process is known as acknowledging the certificate. The commission will post the acknowledged Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency. The posted acknowledged form does not contain the declaration of signature information provided by the business.

A certificate will stay in the pending state until it is acknowledged by the governmental agency. Only acknowledged certificates are posted to the commission's website.

**NOTE: SAMPLE FORM PROVIDED ON NEXT PAGE.**



**CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY**

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

**\*\*YOUR FIRM NAME HERE\*\***

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

**\*\*JEFFERSON COUNTY, TEXAS\***

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

**\*\*BID/CONTRACT/PO NUMBER GOES HERE\*\***

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
<b>**NAME OF PERSON/PERSONS THAT OWN BUSINESS GOES HERE - MUST LIST ANY PERSON THAT DOES NOT WORK FOR THE COMPANY LISTED IN #1 THAT WILL PROFIT FROM THE BID/CONTRACT/PO**</b>			

**5 Check only if there is NO Interested Party.**

**\*\*ONLY CHECK IF NO CONTROLLING OR INTERMEDIARY PARTY\*\***

**6 UNSWORN DECLARATION Vendor are to complete #6 - Unsworn Declaration**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address \_\_\_\_\_ (street) \_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 (month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)

**ADD ADDITIONAL PAGES AS NECESSARY**

## SECTION 19: MANDATED CONTRACT PROVISIONS FOR GRANT-FUNDED PROJECTS

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**A Contract for purchases, services, construction, repairs, or other approved projects** (procured through an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Qualifications (RFQ) or any other legal procurement process per the Texas Local Government Code); **that is funded in whole or part, by Federal Assistance in the form of grant, sub-grant, loan or reimbursement either directly to the County as a recipient or to the County as a sub-recipient of funding provided by the Federal Government to the State of Texas or to the another pass-through agency – shall be subject to Mandated Contract Provisions included in this section, as applicable.**

**The following provisions shall be included in all IFB/RFP/RFQ specifications for which federal funds may be utilized for purchases, services, construction, repairs, or other approved projects; or should there be a possibility of utilizing federal funds for the purpose of restoring these purchase(s) made as a result of the IFB/RFP/RFQ; should improvements or disaster recovery-related restorations and/or replacements be necessary.**

**ADDITIONAL MANDATED CONTRACT PROVISIONS: As included in SECTION 22 (FEMA provisions) and SECTION 23 (FAA provisions) of this manual shall be included in IFB/RFP/RFQ specifications, if applicable.**

This includes *but is not limited* the following Grantors/Grants: Federal Emergency Management Agency (FEMA), Federal Aviation Administration (FAA), Texas General Land Office (GLO), National Fish and Wildlife Foundation (NFWF), Texas Parks and Wildlife Department (TPWD), Community Development Block Grant (CDBG), and Coronavirus Air, Relief, and Improvement Grant (AIP), and Coronavirus Aid, Relief, and Economic Security Act (CARES).

Accordingly, the following Federal Provisions apply to Federal Contracts, pursuant to 2 CFR § 200.326 and 2 CFR Part 200, Appendix II, as applicable.

### 21.1 REMEDIES

- a. **Standard.** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
- b. **Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs.

### 21.2 TERMINATION FOR CAUSE AND CONVENIENCE

- a. **Standard.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be affected and the basis for settlement. See C.F.R. Part 200, Appendix II(B).
- b. **Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs.

## 21.3 EQUAL EMPLOYMENT OPPORTUNITY

If applicable, exact language below in subsection 15.3.d is required.

- c. **Standard.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p.339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).
- b. **Key Definitions.**
- i. **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.
- ii. **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. **Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs.
- d. **Required Language.** 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:**

- (2) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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.

**(1)** 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

**(2)** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

**(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 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 (8) 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.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### 21.4 DAVIS-BACON ACT

- a. **Standard.** All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). 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.
  
- b. **Applicability.** The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
  
- c. **Requirements.**

If applicable, the non-federal entity must do the following:

- i. 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.
  
- ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non- Federal entity must report all suspected or reported violations to FEMA.

- iii. 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”).

**Suggested Language.**

The following provides a sample contract clause:

**Compliance with the Davis-Bacon Act.**

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Contractors are 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.

Additionally, contractors are required to pay wages not less than once a week.

## 21.5 COPELAND ANTI-KICKBACK ACT

- a. **Standard.** Recipient and subrecipient contracts must 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”).
- b. **Applicability.** This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. **It DOES NOT apply to the FEMA Public Assistance Program.**
- c. **Requirements.** If applicable, the non-federal entity must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

**Sample Language.** The following provides a sample contract clause:

**Compliance with the Copeland “Anti-Kickback” Act.**

- a. **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.
  
- b. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as 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.
  
- c. **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.”

**21.6 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. **Standard.** 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 at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
  
- b. **Applicability.** This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**Suggested Language.** The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

**Compliance with the Contract Work Hours and Safety Standards Act.**

*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.

**Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(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 (b)(1) of this section, in the sum of \$27 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 (b)(1) of this section.

**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 (b)(2) of this section.

**Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

## 21.7 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

- a. **Standard.** If the FEMA award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

- b. **Applicability.** This requirement applies to “*funding agreements*,” but it **DOES NOT apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- c. **Funding Agreements Definition.** The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

## 21.8 CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- a. **Standard.** If applicable, contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal warding agency and the Regional Office of the Environmental Protection Agency (EPA). See 2 C.F.R. Part 200, Appendix II(G).
- b. **Applicability.** This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.

**Suggested Language.** The following provides a sample contract clause.

### Clean Air Act

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.

The contractor agrees to report each violation to the **(name of applicant entering into the contract)** and understands and agrees that the **(name of the applicant entering into the contract)** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

## **Federal Water Pollution Control Act**

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 etseq.

The contractor agrees to report each violation to the **(name of the applicant entering into the contract)** and understands and agrees that the **(name of the applicant entering into the contract)** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

### **21.9 DEBARMENT AND SUSPENSION**

**Standard.** Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

**Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs.

#### **a Requirements.**

- i.** These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award 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. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. Part 200, Appendix II(H) 2 C.F.R. § 200.213.
- ii.** In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.
  - 1.** Specifically, a covered transaction includes the following contracts for goods or services:
  - 2.** The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

3. The contract requires the approval of FEMA, regardless of amount.
4. The contract is for federally-required audit services.
5. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

**Suggested Language.** The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

### **Suspension and Debarment**

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's 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).

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.

This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. 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 **(insert name of recipient/subrecipient/applicant)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **21.10 BYRD ANTI-LOBBYING AMENDMENT**

- a. **Standard.** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- b. **Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000

or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

**Suggested Language.**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

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

**Required Certification.**

If applicable, Contractors must complete, sign, and submit to the non-federal entity a “CERTIFICATION REGARDING LOBBYING” form.

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

**NOTE: SAMPLE FORM PROVIDED ON NEXT PAGE.**

## **CERTIFICATION REGARDING LOBBYING**

Certification 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 when 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.

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
**Signature of Contractor's Authorized Official**

\_\_\_\_\_  
**Name and Title of Contractor's Authorized Official** *(Please Print)*

\_\_\_\_\_  
**Date**

## 21.11 PROCUREMENT OF RECOVERED MATERIALS

- a. **Standard.** 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. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.
- b. **Applicability.** This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. **Requirements.** 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.

### **Suggested Language.**

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—

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website:

<https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

## SECTION 20: RECOMMENDED CONTRACT PROVISIONS (FEMA)

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The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts.

**Jefferson County applies these provisions as guidelines other federal/non-federal grant-funded projects.**

Although FEMA does not currently require additional provisions, **FEMA recommends** the following:

### 1. ACCESS TO RECORDS

- a. **Standard.** All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

#### **Suggested Language.**

##### **Access to Records.**

The following access to records requirements apply to FEMA contracts: 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.

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.

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.

In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this



contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

## 2. CHANGES

- a. **Standard.** 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.
- b. **Applicability.** 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.

## 3. DHS SEAL, LOGO, AND FLAGS

- a. **Standard.** Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. **Applicability.** FEMA recommends that all non-Federal entities 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.

### **Suggested Language.**

"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."

## 4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

- a. **Standard.** The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.
- b. **Applicability.** FEMA recommends that all non-Federal entities 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.

**Suggested Language.**

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

**5. NO OBLIGATION BY FEDERAL GOVERNMENT**

- a. **Standard.** FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.
- b. **Applicability.** FEMA recommends that the non-Federal entity 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.

**Suggested Language.**

“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.”

**6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- a. **Standard.** Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. 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. **Applicability.** FEMA recommends that the non-Federal entity 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.

**Suggested Language.**

“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.”

## SECTION 21: RECOMMENDED CONTRACT PROVISIONS (FAA)

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### 1. MINORITY BUSINESS PARTICIPATION

It is the desire of Jefferson County to increase the participation of Minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the County does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms.

*Affirmative Steps pursuant to 2 CFR §200.321:*

**Good faith efforts will be taken to assure small and minority firms are used whenever possible, consistent with 49 CFR part 26. These steps and efforts include, but not limited to:**

- Including qualified small business and minority forms on solicitation lists
- Assure that small businesses and minority firms are solicited whenever they are potential sources. Consultation with Airports Division, Office of Civil Rights and or State transportation offices is used.
- When economically feasible, the total requirements will be divided into tasks to permit maximum small business and DBE firm participation.
- Encourage consultants to subcontract portions of the work, even when they might otherwise perform the work with their own forces.

**For the purpose of IFBs/RFQs/RFPs, Bidders/Respondents are to provide the following information:**

- Certification of any DBEs on this project.
- Percentage of project DBEs will work on, if part of a team.
- The Consultant/Contractor must clearly state that they have no DBEs on their team, if applicable. If Consultant/Contractor has minority businesses as part of a team or is a minority business registered with the State of Texas but is not certified as a DBE, that information must also be clearly stated in response.

### 2. FEDERAL MANDATED CONTRACT PROVISIONS

Some or all of the provisions in this section will be incorporated into a professional service agreement as a result of this solicitation.

#### A. BREACH OF CONTRACT TERMS/REMEDIES Source: 2 CFR § 200 Appendix II (A)

**Applicability:** This provision requires Jefferson County, as the Airport Sponsor, to incorporate administrative, contractual, or legal remedies if contractor/consultant violate or breach contract terms. The sponsor must also include appropriate penalties and sanctions. Language acceptable to meet the intent of this requirement will be included in contractual documents.

This requirement applies to all FEMA grant and cooperative agreement programs

**Contract Types:** This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR § 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is now equal to \$150,000.

**B. TERMINATION OF CONTRACT (FOR CAUSE AND CONVENIENCE)**

**Source:** 2 CFR § 200 Appendix II (B)  
FAA Advisory Circular 150/5370-10, Section 80-09

**Applicability:** This provision requires Jefferson County, as the Airport Sponsor, to incorporate in all contracts over \$10,000, a provision that addresses termination for cause and termination for convenience, by the sponsor. The contractual provision must address the manner by which the sponsor's contract will be affected and the basis for settlement. Language acceptable to meet the intent of this requirement will be included in contractual documents.

This requirement applies to all FEMA grant and cooperative agreement programs.

**Contract Types:** This provision is required for all contracts that exceed \$10,000.

**C. EQUAL OPPORTUNITY EMPLOYER**

**Source:** 2 CFR § 200 Appendix II (C) 41 CFR § 60-1.4  
Executive Order 11246 41 CFR § 60-4.3

**Applicability:** The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally assisted construction contract. There are two provisions, a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount of the contract.

This requirement applies to all FEMA grant and cooperative agreement programs.

**Contract Types:** This provision is required for all contracts that exceed \$10,000.

**Use of Provision:** 41 CFR 60-1.4 provides the mandatory contract language. 41 CFR 60-4.3 provides the mandatory specification language. The sponsor will incorporate these clauses without modification.

**Note:** Any contracts resulting from this RFQ will have the requisite language as set forth in 2 CFR 200 App II, 41 CFR 60-1.4, 41 CFR 60-4.3, and Executive Order 11246.

**D. DAVIS-BACON REQUIREMENTS**

**Source:** 2 CFR § 200 Appendix II (D)  
29 CFR Part 5

**Applicability:** The Davis-Bacon Act ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

**For Professional Services:** The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

**Use of Provision:** 29 CFR 5 establishes the specific language the sponsor must use without modification. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

**E. COPELAND ANTI-KICKBACK**

**Source:** 2 CFR § 200 Appendix II (D)  
29 CFR Part 3 & Part 5

**Applicability:** The Copeland Act (18 USC 874 and 40 USC 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. It DOES NOT apply to the FEMA Public Assistance Program.

**For Professional Services:** The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

**Use of Provision:** 29 CFR 5 establishes the specific language the sponsor must use without modification. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

**F. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

**Source:** 2 CFR § 200 Appendix II (E) 29 CFR Part 5  
40 U.S.C. § 3701-3708

**Applicability:** Contract Workhours and Safety Standards Act Requirements (CWHSSA) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40

in a workweek and prohibits unsanitary, hazardous, or dangerous working conditions on federally assisted projects. The Wage and Hour division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health

Administration (OSHA) enforces the safety and health requirements.

Jefferson County urges all contractors, regardless of funding sources for projects, to follow all applicable Federal and State labor laws.

**For Professional Services:** This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards This includes members of survey crews and exploratory drilling operations.

**Use of Provision: The following text will be included in applicable contracts without modification:**

**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 clause, 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 \$27 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 clause.

**3. Withholding for unpaid wages and liquidated damages.** Jefferson County 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 clause.

**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 clause.

**G. RIGHTS TO INVENTIONS**

**Source:** 2 CFR § 200 Appendix II (F)  
37 CFR § 401

**Applicability:** This provision applies to all contracts and subcontracts with small business forms or nonprofit organizations that include performance of experimental, developmental, or research work. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes experimental, developmental, or research work. This requirement applies to “funding agreements,” but it DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

**Use of Provision:** When applicable, the sponsor’s language in the contract must fully satisfy the requirements of Appendix II to 2 CFR part 200.

**H. CLEAN AIR AND WATER POLLUTION CONTROL**

**Source:** 2 CFR § 200 Appendix II (G)  
29 CFR Part 5

**Applicability:** This provision is required on all contracts and lower tier contracts that exceed \$150,000.

**Use of Provision:** The following language will be included in applicable contracts:

1. Contractor agrees to comply with all applicable standards, orders, and regulations 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. § 1251-13870). The contractor agrees to report any violation to the owner immediately upon discovery. The owner assumes responsibility for notifying the EPA and the FAA.

**I. DEBARMENT AND SUSPENSION**

**Source:** 2 CFR Part 180 (Subpart C) 2 CFR Part 3000  
2 CFR Part 1200DOT Order 4200.5

**Applicability:** Required in all FEMA grant and cooperative agreement programs, regardless of amount. This requirement applies to covered transactions as defined in 2 CFR part 180. AIP funded contracts are non-procurement transactions as defined by §180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agents or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. Jefferson County must verify that the firm or individual that is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally assisted projects. This is accomplished by:

1. Checking SAM.gov to verify the firm’s or individual’s status;
2. Collecting a certification from the firm or individual that is not suspended, debarred, or excluded; and
3. Incorporating a clause into the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

See Section 12, Paragraph E above for more information on SAM.gov.

**Use of Provision:** When applicable, the sponsor’s language in the contract must fully satisfy the requirements of Appendix II to 2 CFR part 200.

**J. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

**Source: 2 CFR § 200 Appendix II (J) 31 USC § 1352 – Byrd Anti-Lobbying Amendment  
49 CFR Part 20, Appendix A 44 CFR Part 18**

**Applicability:** This requirement applies to all FEMA grant and cooperative agreement programs. Consultants and contractors that apply or bid an award of \$100,000 or more must certify 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 another award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**Use of Provision:** When applicable, the sponsor’s language in the contract must fully satisfy the requirements of Appendix II to 2 CFR part 200 Appendix (J) and 31 USC 1352.

If applicable, contractors must sign and submit to Jefferson County the “Certification Regarding Lobbying” Form included in this bid specification.

**K. PROCUREMENT OF RECOVERED MATERIALS**

**Source: 2 CFR § 200 Appendix II (J) Solid Waste Disposal Act  
40 CFR Part 2472 CFR § 200.322**

**Applicability:** Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the EPA guidelines. When acquiring items designated in the guidelines, the sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

This requirement applies to:

- All contracts awarded by a non-Federal entity under FEMA grant and cooperative agreement programs.
- All construction and equipment projects.
- Any contract, professional and property acquisition, that includes procurement of a product that exceeds \$10,000.

Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines website:

<https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.” The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts.

**Use of Provision:** When applicable, the sponsor’s language in the contract must fully satisfy the requirements of Appendix II to 2 CFR part 200.



**L. ACCESS TO RECORDS AND REPORTS**

**Source: 2 CFR § 200.333 FAA Order 5100.38**  
**2 CFR § 200.336**

**Applicability:** 2 CFR § 200.333 requires a sponsor to retain records pertinent to a federal award for a period of three years from submission of final closure documents. 2 CFR § 200.336 establishes that sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the sponsor’s contracts and subcontracts of AIP funded projects.

**Use of Provision:** When applicable, the sponsor’s language in the contract must fully satisfy the requirements of Appendix II to 2 CFR part 200. The following will be in applicable contracts:

1. The contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the local/state/federal entity providing funding for this project, 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 maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters have been resolved.
3. 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.
4. The Contractor agrees to provide the FEMA Administrator or their representatives access to construction or other work sites pertaining to the work being completed under the contract.
5. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**M. AFFIRMATIVE ACTION REQUIREMENT**

**Source: 41 CFR Part 60-4 FAA Order 5100.38**  
**Executive Order 11246**

**Applicability:** Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/03/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

**Contract Types:**

- **Construction:** The sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000.
- **Equipment:** The sponsor must incorporate this notice in all solicitations for equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment, generators). This provision does not apply to equipment acquisition projects where the manufacturer of the equipment takes place offsite at a manufacturer’s plant (e.g. firefighting and vehicles).

- **Professional Services:** The sponsor must incorporate this notice in any professional service agreement if the agreement includes tasks that meet the definition of construction work, as defined by the DOL, and exceeds \$10,000.

**Use of Provision:** When applicable, the sponsor’s language in the contract must fully satisfy the requirements of 41 CFR Part 60-4. The following will be in applicable contracts:

**Solicitation Clause:**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The Offeror’s or Bidder’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:
  - a. Goals for minority participation for each trade: [insert established goal]
  - b. Goals for female participation in each trade: 6.9%

These goals are applicable to all of the contractor’s construction work, whether or not it is federal or federally assisted, performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR Part 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with these goals will be measured against the total work hours performed.

The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of these subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

As used in this notice and in the contract resulting from this solicitation, the covered area is Texas, Jefferson County, Beaumont.

**N. BUY AMERICAN PREFERENCES**

**Source: 49 USC § 50101**

**Applicability:** the buy American preference requirement in 49 USC § 50101 requires that all still in manufactured goods used on AIP projects be produced in the United States. This statute gives the FAA the ability to issue a waiver to a sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions a sponsor may request that the FAA issue a waiver from the by American preference requirements if the FA finds that:

1. Applying the provision is not in the public interest;
2. The steel or manufactured goods are not available in sufficient quantity or quality in the United States;
3. The cost of components in subcomponents produced in the United States is more than 60% of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number, such as specific airport lighting equipment, are considered the equipment.
4. Applying this provision would increase the cost of the overall project by more than 25%.  
For construction and equipment procurement projects, language, forms, and references to 49 USC § 50101 will be included in the solicitation.

Professional Service Agreements typically do not result in a deliverable that meets the definition of a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the sponsor must include the Buy American Preference provision in the agreement.

**Use of Provision:** When applicable, the sponsor’s language in the contract must fully satisfy the requirements of 49 USC § 50101.

**O. CIVIL RIGHTS**

**Source: 49 USC § 47123 Title VI of the Civil Rights Act of 1964**

**FAA Order 1400.11 US DOT Order 1050.2**

**Applicability:** Title VI of the Civil Rights Act of 1964, as amended, Title VI, prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. DOT Order 1050.2 Standard Title VI Assurances and Nondiscrimination Provisions, effective 04/24/2013. These assurances require the sponsor insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

**TITLE VI SOLICITATION NOTICE:**

Jefferson County, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC § 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **Title VI List of Pertinent Nondiscrimination Acts and Authorities:**

During the performance of any contract as a result of this bid, the Contractor, for itself, its assignees, and successors in interest, hereinafter referred to as the Contractor, agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964
- 49 CFR part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Airport and Airway Improvement Act of 1982
- The Civil Rights Restoration Act of 1987
- Titles II and III of the Americans with Disabilities Act of 1990
- The Federal Aviation Administration's Nondiscrimination Statute
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency
- Title IX of the Education Amendments of 1972

### **P. DISADVANTAGED BUSINESS ENTERPRISE**

**Source: 49 CFR part 26**

**Applicability:** A sponsor that anticipates awarding \$250,000 or more in AIP funding prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (§26.21). The approved DBE program will identify a 3-year overall program goal that the sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project. (§26.45).

**Sponsors with a DBE program on file with the FAA must include the three following provisions, if applicable:**

- Clause in all solicitations for proposals for which a contract goal has been established;
- Clause in each prime contract, and;
- Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

**As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:**

1. Names and addresses of the DBE firms that will participate in the contract;
2. A description of the work each DBE firm will perform;
3. Percentage/dollar amount of the participation of each DBE firm listed under 1.
4. Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
5. If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in 49 CFR part 26 Appendix A

The requirements of 49 CFR part 26 apply to this contract. It is the policy of Jefferson County to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this

contract. Jefferson County encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**DBE CONTRACT ASSURANCES:**

Contracts as a result of this bid will include contract assurances per §26.13, if applicable:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 and the award and administration of Department of Transportation-assisted contracts. Failure by contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the owner deems appropriate, which may include but is not limited to:

1. Withholding monthly progress payments;
2. Accessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Jefferson County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Jefferson County. This clause applies to both DBE and non-DBE subcontractors.

**Q. DISTRACTED DRIVING**

**Source:** Executive Order 13513 2 CFR §200.67  
DOT Order 3902.10

**Applicability:** The FAA encourages recipients of federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

**Use of Provision:** The following clause will be included in all Federally-assisted contracts regardless of amount:

In accordance with executive order 13513, federal leadership on reducing text messaging while driving, Andy OT order 3902.10, text messaging while driving, the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, Jefferson County encourages the contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles Papa forming work activities associated with the project. The contractor must include the substance of this clause and other sub tier contracts exceeding \$3,500 that involve driving a motor vehicle and performance of work activities associated with the project.

## **R. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

**Applicability:** FEMA recommends that all non-Federal entities 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.

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

## **S. NO OBLIGATION BY FEDERAL GOVERNMENT**

The FAA and or FEMA is not a party to any transaction between the recipient and its contractor. The FAA and or FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

**Applicability:** FEMA recommends that the non-Federal entity 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.

“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.”

## **T. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. 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.

FEMA recommends that the non-Federal entity 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.

“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.”

## **SECTION 22: STATE PURCHASING PROGRAMS**

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### **OVERVIEW AND STATUTORY AUTHORITY**

There are five types of purchasing programs that allow local governments to purchase Goods and services using contracts previously competed by the State of Texas or other governmental entities. The Texas Comptroller of Public Accounts Procurement and Support Services (TPASS) manages two of them.

#### **A. STATE CONTRACT PURCHASES**

The state has entered into contracts for numerous Goods and services after using Competitive Purchasing Procedures. TPASS manages this program for the state. Texas Local Government Code sections 271.081 through 271.083

#### **B. TEXAS MULTIPLE AWARD SCHEDULES (TXMAS)**

The County may purchase goods and services from a schedule of multiple award contracts developed by TPASS. The schedule is adapted from General Services Administration (GSA) Federal Supply Service contracts. Texas Government Code section 2155.502

#### **C. THE TEXAS DEPARTMENT OF INFORMATION RESOURCES (DIR)**

Manages the other three programs and allows local governments to purchase computer technology through DIR from its contracted vendors. The County may purchase computer-related equipment and services through DIR and from its contracted vendors.

**DBITS:** The County may purchase deliverable based IT services through DIR vendors.

**IT Staffing Services:** The County may purchase IT Staffing Services contracts provide for temporary IT staffing augmentation services on a time (hourly) basis through DIR from its IT Staffing Services contracts. Texas Government Code Interlocal Cooperation Act, Chapter 791.

### **OFFICIAL REPRESENTATIVE**

The Purchasing Agent acts for Jefferson County in all matters related to purchase of goods and services from a vendor under any contract based on a state purchasing program. Jefferson County is liable for making payments directly to these vendors.

### **STATE CONTRACT PURCHASES**

The County participates in the purchasing program of TPASS for local governments. The County may purchase Goods and services from Vendors on the same terms and conditions that the state obtained through its Competitive Purchasing Procedures. The Purchasing Agent either submits Purchase Orders to TPASS under a contract or electronically sends Purchase Orders directly to selected vendors and reports to TPASS on actual purchases in compliance with its regulations. The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services. The Purchasing Agent signs and delivers all necessary documents for all purchases for the County under this program.

## **TEXAS MULTIPLE AWARD SCHEDULES (TXMAS)**

The County participates in the purchasing program of TPASS using TXMAS contracts developed from contracts that have been competitively awarded by the federal government or any other governmental entity of any state. TXMAS contracts include the most favored customer (MFC) pricing and allow the County to negotiate lower prices than offered on the scheduled contract under certain circumstances. The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services.

## **JEFFERSON COUNTY PURCHASING PROCEDURES GUIDE**

The Purchasing Agent signs and delivers all necessary documents for purchases for the County under this program.

**DIR PURCHASES GoDIREct:** The Purchasing Agent either submits Purchase Orders to DIR under its contract or electronically sends Purchase Orders directly to GoDIREct vendors to purchase computer-related equipment and services. The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services. The Purchasing Agent signs and delivers all necessary documents for purchases under this program.

### **DELIVERABLES BASED IT SERVICES (DBITS) are available through DIR vendors for the following services:**

- (a) Application development
- (b) Application maintenance and support
- (c) Business intelligence (BI) and data warehouse
- (d) Enterprise resource planning (ERP)
- (e) Independent verification and validation (IV&V)
- (f) Information technology assessments and planning
- (g) Project management
- (h) Service oriented architecture (SOA)
- (i) Technology upgrade, migration and transformation

The Purchasing staff submit a statement of work to vendors offering the technology category requested, and negotiate pricing of deliverables and terms and conditions directly with a vendor. The vendor may begin work only after receiving a statement of work signed by both the County and the vendor, and a Purchase Order issued by the Purchasing Office. The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services. The Purchasing Agent signs and delivers all necessary documents for purchases under this program.

**IT STAFFING SERVICES:** Contract staff render services and are paid on an hourly basis. IT Staffing Service contracts do not provide for deliverables-based outsourced systems integration or application development projects. The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services.

The Purchasing Agent signs and delivers all necessary documents for purchases under this program.

### **Satisfaction of State Laws Requiring Competitive Bids:**

Purchases made through the programs described in this section satisfy any state law requiring the County to seek competitive bids for the purchase.



## SECTION 23: PURCHASING OF PROFESSIONAL SERVICES

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### A. INTRODUCTION

The two principal laws with which the Purchasing Department must comply are the **Professional Services Purchasing Act** and the **Purchasing Act**.

**There are two kinds of professional services:**

- (1) Those professional services specifically defined under the Professional Services Purchasing Act; and
- (2) Those “other” professional services that are not specifically defined under either the Professional Services Purchasing Act or the County Purchasing Act and which must be obtained in compliance with the County Purchasing Act. The Purchasing Agent must rely on court cases and Attorney General opinions to determine what services are included in these “other” professional services.

### B. PURPOSE

The Purchasing Department may contract for professional services only if funds are budgeted for that purpose as confirmed by Auditing or the solicitation is approved by the Commissioners’ Court.

### C. PROFESSIONAL SERVICES PURCHASING ACT

#### ***Definition***

**Professional services are defined in the Professional Services Purchasing Act as:**

1. Those within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, or professional engineering as defined by the laws of the State of Texas; and/or
2. Those performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, land surveyor, or professional engineer in connection with his professional employment or practice.

The Act states that contracts for the Purchasing of these professional services **may not** be awarded on the basis of bids. Instead, services must be awarded on the basis of demonstrated competence and qualifications.

#### ***Procedures***

Departments shall forward a requisition or a memo to the Purchasing Department when professional services are required.

**The requisition or memo will identify the following:**

1. Scope of work
2. Qualifications/experience requirements
3. Project description
4. Time frames
5. Budgeted amount and budget line items
6. Suggested professionals

Based on the information provided in the requisition or memo, applicable state laws and all relevant facts, the Purchasing Agent will decide as to whether a formal RFQ or an informal Purchasing process will be implemented.

Unless specifically exempted by the Commissioners' Court, all professional services anticipated to cost over \$50,000 will be procured using the formal RFQ process. The Purchasing Agent will submit all exemption orders to the Commissioners' Court. Unless there is an urgent need for the services, the exemption order will be submitted to the Commissioners' Court for approval before selecting and negotiating with any Vendors.

**D. Purchasing Act**

***"Other" Services Defined***

As defined in this manual, "other" personal or professional services are those services usually referred to as a professional service, but not specifically defined or covered in the Professional Services Purchasing Act. Examples include computer programmers, lawyers, facilitators, etc. Various court opinions have defined these "other" professional services as services requiring technical skill and expertise; labor and skill which are predominantly mental or intellectual, rather than physical or manual; or, a special skill and experience. "Other" personal services have been defined as services that must be performed by a particular person and, by the terms of the contract, no substitutions are allowed.

## **SECTION 24: CONSTRUCTION PURCHASING**

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### **A. PURCHASING STATUTES**

Texas Local Government Code §262.011 states, “The County Purchasing Agent shall supervise all purchases made on competitive bid...” Texas Local Government Code §271.024 states “...to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$50,000...bidding on the contract must be accomplished in the manner provided by this subchapter.”

### **B. SUPERVISION**

Construction Purchasing will be consistent with other Purchasing procedures as defined in this manual and in accordance with pertinent statutes. The Purchasing Agent will supervise all construction purchasing in conjunction with the Engineering Department.

### **C. PURCHASE REQUISITION**

A requisition submitted to the County Auditor, signed by the elected Official or Department Head, will serve as the initial notification that a competitive bid is needed. A draft copy of the plans and specifications should be submitted with the requisition. The specifications will be reviewed and approved by the Purchasing Agent for compliance with the Purchasing Act prior to submittal to Commissioners’ Court for approval.

### **D. ADVERTISEMENT FOR BID**

#### **The Purchasing Department will publish the advertisement for bid, which shall include:**

1. Brief Description of services or goods
2. Location at which the bidding documents, plans, specifications, or other data may be obtained
3. Bid Bond requirements (if applicable)
4. Bid Due Date & Time
5. Location for Bid Submission
6. Location for Bid Opening

If the contract is to be set on a unit price basis, the notice must also include the approximate quantities of the goods and services needed that are to be bid on and the quantities must be based on the best available information.

As outlined in the Texas Local Government Code §262.025, “A notice of a proposed purchase must be published at least once a week in a newspaper of general circulation in the County, with the first day of publication occurring before the 14th day before the date of the bid opening.”

## **E. BIDDERS NOTIFICATION**

**The Bidders Notification MUST be distributed and documented via the following methods:**

**Distribute to a minimum of five (5) potential bidders via Certified Mail.**

*Documentation to be included in Bid File:* Copy of Return Receipt (Green Card) for Certified Mail.

**Post on the Texas Comptroller's Electronic State Business Daily (ESBD)/TX SmartBuy website**

*Documentation for Bid File:* Copy of Posting Confirmation Email from ESBD/TX SmartBuy.

**Post on Jefferson County Purchasing Department Webpage**

**In addition to the required notification methods, the Bidders Notification may be distributed and documented via the following methods:**

**Distribute via Non-Certified Mail**

*Documentation for Bid File:* Either make a notation on Bidders' List in bid file or copy envelopes prior to being mailed out (making sure that Bidders' mailing address visible).

**Email**

*Documentation for Bid File:* Copy of Email and Sent Receipt and/or Read Receipt if available in bid file.

**Fax**

*Documentation for Bid File:* Copy of Fax Confirmation.

## **F. BONDING REQUIREMENTS**

No bonds will be required for construction contracts that are *less than* \$50,000.

### ***Bid Bonds***

Bid bonds will not be required for construction contracts that are less than \$100,000. Bid bonds will not be required from any bidder whose rates are subject to regulation by a state agency.

If the Purchasing Agent decides that a bid bond is required for a particular contract, the notice to bidders or request for proposals will state that a bid bond in the amount of 5% of the contract price is required. A surety company authorized to do business in Texas must execute the bid bond.

### ***Performance Bonds***

For all contracts in excess of \$100,000 for the construction, repair, or alteration of a public work, or the prosecution or completion of any public work, the contractor, before commencing work, must execute a performance bond that is:

1. Payable to Jefferson County;
2. In the full amount of the contract;
3. Conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents;
4. Solely for the protection of the County;
5. Executed by a corporate surety or sureties in accordance with the Insurance Code; and
6. In a form approved by Commissioners' Court.

### **Payment Bonds**

For contracts in excess of \$50,000 for the construction, repair, or alteration of a public work or the prosecution of completion of any public work, the contractor, before commencing work, must execute a payment bond that is:

1. Solely for the protection of all claimants supplying labor and material in the performance of work provided in the contract;
2. Payable to Jefferson County, Texas for the use of these claimants;
3. In the full amount of the contract;
4. Executed by a corporate surety or sureties in accordance with the Insurance Code; and
5. In a form approved by the Commissioners' Court.

### **G. RECEIPT OF COMPETITIVE BIDS**

The following procedures will be adhered to when receiving bids:

1. The County Purchasing Department will receive all bids.
2. All bids will be stamped with the time and date received. The date stamp in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received in the Purchasing Department.
3. No bids will be received after the opening time on the day of the bid opening. All bids received after the opening time on the day of the bid opening. All bids received after the will be returned unopened to the bidder along with notification that the bid was received after the bid due date and time.

*Exceptions:* Any exceptions to the above procedure will be solely the decision of the Purchasing Agent.

4. After bids are received, a secure place will be provided by the Purchasing Department for the holding of the bids until the bid opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Department in a public forum.
5. The above process shall be undertaken in a manner that will preclude any notion of favoritism, revealing bid prices, or any information. Having sealed bids publicly read should inhibit the perception that the Purchasing Department is manipulating the receiving of bids.

### **H. PUBLIC OPENING OF BIDS**

Sealed bids will be opened publicly by the Purchasing Department and will be documented. Preliminary bid tabulations will be provided to the public upon request.

The Purchasing Agent will open the bids on the date, time and place specified in the notice and provide a copy to the Commissioners' Court. The date specified in the notice may be extended by the Purchasing Agent if an error is discovered in the original specifications. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

## **I. EVALUATION OF BIDS**

The Purchasing Department will evaluate all bids, with assistance from the user department, and a joint recommendation will be made to Commissioners' Court. Purchasing will be responsible for placing the item on the Agenda of the Commissioners' Court.

### **Evaluation of bids will be based on the following factors:**

1. The relative prices of the bids, including the cost of repair and maintenance of heavy equipment if that is the subject of the bid, and the cost of delivery and hauling if road construction equipment;
2. Compliance of goods and services offered with specifications;
3. The responsibility of the Vendor, including the Vendor's safety record if the Commissioners' Court has adopted a definition of safety that is included in the bid;
4. The past performance of the vendor.

When the lowest priced bid is not the best bid, clear justification for not selecting the lowest bidder must be documented to the Commissioners' Court. This recommendation will be supported by clear and concise documentation from the user department that defines the rationale for awarding to other than the lowest bidder. A joint review of the bid by the Engineering Department and the Purchasing Department is required.

## **J. CONTRACT AWARD**

The Purchasing Agent and the Engineering Department--if applicable to the project, will recommend contract award to Commissioners' Court in session. The Court shall:

1. Award the contract to the responsive and responsible bidder who submits the lowest and best bid; or
2. Reject all bids and publish a new notice.

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

A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the Commissioners' Court and present evidence concerning the lower bidder's responsibility. After award, the Purchasing Agent will return the bid bonds of any contractor that was not awarded a contract.

After an award is made, a contract will be processed, and copies of the contract will be sent to the contractor, the using department(s), the County Auditor, the County Clerk, and the Purchasing Department.

## **K. CONTRACT ADMINISTRATION**

The user department will be responsible for monitoring and documenting contractor performance/compliance and provide Purchasing with copies of this documentation, thereby keeping Purchasing apprised of all performance and compliance issues. Discussions that merely explain the interpretation of the specifications may be dealt with orally by the user department. If poor performance or non-compliance with the contract is evidenced, the user department will be responsible to initiate written corrective action with the contractor. Purchasing will be provided an advance copy of any written correspondence directing correction of a discrepancy. The user department will solicit Purchasing to initiate corrective action when the user department cannot resolve any conflict through correspondence in consultation with user department.

The occupant department must not provide any instruction or requests for changes directly to the contractor. Only the user department's project manager or the Purchasing Agent has the authority to give any directions directly to the contractor.

The Purchasing Agent will take all steps related to correcting non-compliance with the contract but must consult with the County Attorney before taking any steps toward suspension or termination of the contract unless emergency, life safety or property damages issues require immediate temporary work stoppage. Before any letters, notices or other communication related to termination or suspension are delivered, the contents of these must be reviewed by the County Attorney as the initial steps toward potential litigation.

## **SECTION 25: EXEMPTIONS TO THE COMPETITIVE PURCHASING PROCESS**

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### **A. PURCHASING ACT**

Many goods and services can be exempted from the competitive Purchasing process if the Commissioners' Court orders the purchase exempt. Texas Local Government Code §262.024 lists all the circumstances when exemptions are allowable for purchases made out of current funds, bond funds, or through time warrants. The following is a list of these circumstances:

1. Goods and services that must be purchased in a case of public calamity, if it is necessary to make the purchase promptly to relieve the necessity of the citizens, or to preserve the property of the County;
2. Goods and services necessary to preserve or protect the public health and safety of the residents of the County;
3. Goods and services necessary due to unforeseen damage to public property;
4. Personal or professional services;
5. Any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three-month period;
6. Any land or right-of-way;
7. Goods and services that can only be obtained from one source, including
8. Goods and services for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
9. Films, manuscripts, or books;
10. Electric power, gas, water, and other utility services; and
11. Captive replacement parts.
12. Food goods;
13. Personal property sold at auction by a state licensed auctioneer, in a going-out-of-business-sale held in compliance with the Business and Commerce Code or by a political subdivision, state agency, or federal government entity;
14. Work performed under a community and economic development contract under §381.004; and
15. Renewal of a lease or equipment maintenance agreement.

### **B. PUBLIC FINANCE ACT**

Texas Local Government Code §271.056 lists all the circumstances when exemptions are available for purchases made out of certificate of obligation funds

### **C. POLICY**

Exemption orders must be processed through the Purchasing Department. In all cases except the acquisitions of interests in land for County roads, bridges, and parks, and all fee simple purchases of real property, the Purchasing Agent will request the exemption order from Commissioners' Court.

### **D. EMERGENCY**

"Emergency" means circumstances in which an immediate response is required to provide for the safety of persons or property.



## E. SOLE SOURCE GOODS AND SERVICES

Sole source goods and services require a statement from the Purchasing Agent as to the existence of only one source, and specifically noting which type of listed sole source good or service is being purchased. The statement will be submitted for acceptance by Commissioners' Court and must be entered in the minutes of the meeting of Commissioners' Court.

## **SECTION 26: RENEWAL OF EQUIPMENT LEASES AND MAINTENANCE CONTRACTS**

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The renewal or extension of a lease or of an equipment maintenance contract can be exempt from formal competitive bidding, if the Commissioners' Court, by order, grants the exemption, **and if:**

1. The lease or contract has gone through formal competitive bidding within the preceding year;
2. The renewal or extension does not exceed one year; and
3. The renewal or extension is the first renewal or extension of the lease or contract.

## **SECTION 27: RECEIPT OF GOODS**

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### **A. POLICY**

Departments must notify the Purchasing Department if goods are not received by the due date or if damaged freight is delivered.

### **B. VERIFICATION OF ORDERS**

Department employees receiving shipments should pay particular attention to the delivery ticket, and how it matches the County's purchase order. The person receiving goods must verify that all goods were shipped as stated on the delivery ticket, and sign on all of the appropriate receiving documentation.

### **C. DAMAGED FREIGHT**

When a shipment arrives, the user department must inspect the condition of all cartons. If freight is undamaged, the department receiving shipment should sign the freight bill.

If freight is visibly damaged, receiving department must instruct the deliverer to note the damage on the freight bill and sign it.

If there is concealed damage, save the shipping cartons and notify Purchasing of the damages.

Damaged freight must be reported to the freight line within 15 days after delivery. After 15 days, the freight line is no longer liable for the damages. All packing materials and boxes should be kept in the event of damaged freight shipments.

## SECTION 28: ASSET INVENTORY INSTRUCTIONS

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### A. ALL DEPARTMENTS

Each Department Head or Elected Official has the primary responsibility for ensuring protective custody, and accounting for, all County fixed assets assigned to their department.

**Note:** It is the duty and responsibility of all Departments to retain a record of all items purchased that cost between \$50.00 and \$1000.00, for example, such items as calculators and cameras. A copy of this record is to be sent to the Purchasing Department. At the end of each fiscal year, the list is to be physically verified and the additions, deletions, or missing items are to be recorded. A copy of this physical inventory, along with an explanation of any discrepancy, is to be sent to the Purchasing Department.

This responsibility includes examining the ***Asset Register by Department***, which is distributed quarterly by the Purchasing Department. This report is generated from fixed asset records stored in the County's HTE Fixed Asset System. All reports must be signed by the Department Inventory Coordinator and returned to the Purchasing Department by the date indicated on the cover letter. Any discrepancies should be noted directly on the report. Any appropriate documentation substantiating the discrepancies should be subsequently submitted to the Purchasing Department in care of the Purchasing Agent for reconciliation of fixed asset records via direct update to the FA module.

In general, though it is the responsibility of each County Department to account on a quarterly basis for all assigned County fixed assets, the Purchasing Agent may spot check or conduct a full inventory of any County Department, and recommend changes.

### B. DEFINITIONS

**FIXED ASSET** – is tangible property (something you can touch or see) and computer software expected to be useful to the County for more than one year and has a cost of at least \$5,000.00. Examples of fixed assets include machinery, automotive vehicles, furniture, buildings, and improvement to buildings. Normal maintenance and repair is not a fixed asset. However, if the maintenance or repair is substantial and it drastically extends the life of the asset, it should be capitalized (recognized as a fixed asset).

**SALVAGE PROPERTY** – is defined as property that, because of use, time, or accident, is so worn, damaged, or consumed that it has no value for the purpose for which it was originally intended, but does otherwise have value.

**SURPLUS PROPERTY** – is property, other than salvage, not currently useful, but considered to have future usefulness, either as originally intended or otherwise.

### C. ANNUAL INVENTORY

Annually, an inventory of all County property is made prior to July in order to comply with State Law. The purpose of the inventory of assets in Jefferson County is to verify the accuracy of our asset records. This verification includes checking the accuracy of information on the current asset listing and reporting assets which may not be included on the list or which should be deleted. In order to accomplish this purpose, please follow the steps listed below:

1. Conduct the inventory one room at a time in your office area, making certain that all assets in the room are included on the computer printout or listed on the separate "Assets Not Listed on Printout" sheet. Place a check mark (✓) to the right of the asset number for each asset listed as you locate it. Please watch for small items that could be stored inside a desk, cabinet, or closet.
2. For each asset, check the accuracy of all information on the printout, including asset number, description, location and serial number. In most instances, you will not be able to verify the acquisition date and cost.
  - a. Corrections to the information on the printout should be made in red ink.
  - b. Watch carefully for recently acquired assets and the ones that they replaced to be sure that the correct asset is listed.
3. If assets that were previously submitted for an auction remain on your printout, please mark those items as "Auction."
4. If the location is not indicated on your printout or is different from the location shown, please make the correction.
5. Indicate whether the asset is currently **used** in your office. This information should be shown on all assets.
6. Please indicate the condition of the asset, using the following symbols:
 

<b>G</b>	Good	<b>F</b>	Fair
<b>B</b>	Bad	<b>X</b>	Broken
7. After all assets currently on hand have been marked on the inventory list, please review those that are not checked off on the printout. Indicate the disposition of each missing asset.
8. After you have completed the inventory, please sign and date the Asset form, which verifies that you have completed the inventory according to instructions.
9. Return one marked copy of the inventory printout, verification form, and Assets Not Listed on Printout form to the Purchasing Department as soon as you have completed the inventory. All forms should be returned within 7 – 10 working days.
10. Keep a copy of all material submitted to the Purchasing Department. A process of retagging all assets will take place during the summer. Your copy of the materials will be a good reference if questions come up at that time.

The Purchasing Department appreciates the assistance of each department in maintaining its inventory. With your help, we should be able to greatly improve the information in the asset files. Future inventories should be much easier with this updated information and the tags that will be placed on items.