Orange County
Purchasing Department
Policy & Procedure Manual

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ORGANIZATION AND AUTHORITY

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County Judge John H. Gothia
Commissioner Johnny Trahan Precinct 1
Commissioner Chris Sowell Precinct 2
Commissioner Kirk Roccaforte Precinct 3
Commissioner Robert Viator Precinct 4

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1. PURCHASING POLICY

A. Purpose

The purpose of this Purchasing Manual is to serve as a source of instruction to all County Departments and employees regarding the Purchasing Policies and Procedures of Orange County, Texas. The adoption of this Purchasing Manual and the approval of any subsequent revisions by Commissioners' Court 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 the Commissioners' Court, as well as all purchasing transactions that are paid for directly from County funds under the control of the Commissioners' Court.

C. Distribution

This manual will be available to all County Departments and all County Employees involved in the purchasing process. The Purchasing Department shall post this manual on the Orange County website.

D. Implementation

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

- The Purchasing Agent, as head of the Purchasing Department, shall exercise functional authority over the County purchasing process to implement and enforce these policies and procedures on a countywide basis, as well as in the Purchasing Department for its role in the process.
- Each Elected Official and/or Department Head shall be responsible for implementing and enforcing these policies and procedures within their respective agencies.
- 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 goods or services.
- 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.

E. Revisions

This manual serves 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 posting revisions to the Orange County website.

F. Orange County Purchasing Policies and Procedures

The Orange County Purchasing Policy is to:

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

G. The Purchasing Act

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 $100,000.00 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(d), Government Code, for purchasing; or

(3) comply with a method described by Chapter 2269, Government Code.

(b) The requirements established by Subsection (a) apply 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 by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271)

(b-1) A County that complies with a method described by Chapter 2269, Government Code, as provided by authorized by Chapter 1431, Government Code, may not issue anticipation notes for the payment of the contract in an amount that exceeds the lesser of:

(1) Twenty percent (20%) 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 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 of Orange County. The Purchasing Department acts as County representative on all matters pertaining to purchases. The Purchasing Department shall do the purchasing for any Orange County Department and all Elected Officials.

H. Purchasing Department Policies

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 by obtaining a view to attaining the best value for the money spent. Therefore, the vendor selected will be the bidder who submits the lowest and/or 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.

I. Effective Date

These policies and procedures shall become effective upon approval by the Commissioners' Court.

J. Precedents and Interpretation

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.

K. Grant Funded Purchases

Grants should be administered via a written contractual agreement between Orange County and the party providing the service. All purchases made with grant monies will comply with the terms and conditions of the grant, as well as the County's procedures regarding all purchases. The user department must provide the Purchasing Agent with a copy of all procurement requirements and deadlines in the grant document before any bid, proposal, purchase order, or advertising procedures. The user department must identify the allocated grant monies in the detailed description section when entering a requisition in the Tyler-ERP Pro 10 System. The user department shall be available for any clarification or additional information required ensuring compliance with the terms and conditions of the grant.

2. GENERAL PURCHASING POLICY AND PROCEDURES

A. General Information

Orange 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 to circumvent the Purchasing Act (formal competitive bidding procedures) violate the law (Texas Local Government Code §262.023):

- **Component Purchases** – Purchasing a series of component parts of goods, which normally would be purchased as a whole.
- **Separate Purchases** – Purchasing goods and services in a series of separate purchases, which in normal purchasing practices, would have been a one-time purchase.
- **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**. The Purchasing Department acts as County representative on all matters pertaining to purchases.

The user department must submit an agenda item to the Commissioners' Court for approval of any capital outlay item(s) not pre-approved for the current budget year.

Departments must ensure funding is budgeted and available. Departments shall not submit any requisition(s) to the Purchasing Department without sufficient funds. If funds are not available, it will be the responsibility of the user department to reconcile the expenditure(s) with the Orange County Auditor. Any submitted requisition(s) shall indicate that funds are budgeted and available for processing. 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 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 should allow a one (1) to three (3) working day cycle time after final approval of requisition on all purchases requested that are under $100,000.00; and
- Departments should allow a six (6) to eight (8) week cycle time after final approval of requisition on all purchases requested that are over $100,000.00 (but not limited to purchases over $100,000.00).

Departments must ensure 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 ensure they are descriptive and specific but do not prevent competitive bidding of comparable goods.

B. MIS Review of Data Processing Equipment

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

C. Bidders' Lists

The Purchasing Department maintains a list of vendors who have requested that they be sent notices of solicitations. This bidders' list is categorized by description of goods or services available to Orange County.

As a courtesy to vendors and as a means of encouraging competition, the Purchasing Department will attempt to send a notice of each solicitation to appropriate vendors.

3. BONDING REQUIREMENTS

Orange County Texas will require bonds for any construction, repair, or alteration of public works. **No purchase order will be released until the vendor provides all required documents to Orange County Purchasing.**

The successful bidder shall be required, at his own expense, to furnish the Orange County Purchasing Agent within ten (10) days of notification of award with certified copies of all bond(s) as per bid

specifications. Failure to furnish bond(s) will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

A. Minimum Bid Bonds

Bid bonds will not be required for contracts that are valued at less than $100,000.00.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

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.

B. Bid Bond

Orange County Texas will require bonds for construction, repair, or alteration of public works. A bid bond MUST be submitted with any bid over $100,000.00. The bid bond shall be in the amount of 5% of the bid price and is to be issued by a surety company authorized to do business in Texas.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

No exception will be made. Failure to furnish a bid bond(s) with the bid will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

C. Performance Bonds

Orange County Texas will require performance bonds for the construction, repair, or alteration of public works. The successful bidder shall be required, at his own expense, to furnish the Orange County Purchasing Agent within ten (10) days of notification of award with certified copies of all bond(s) as per bid specifications. Failure to furnish bond(s) will result in the bid being declared non-responsive.

For all contracts over $50,000.00 for the construction, repair, or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a performance bond that:

1. Is payable to the county,

2. Is in the full amount of the contract,

3. Is conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents,

4. Is solely for the protection of the county,

5. Executed by a corporate surety or sureties in accordance with the Insurance Code, and

6. Bond(s) must remain in effect for one year beyond the date of acceptance by the Owner.

Any performance bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE, Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond, and remedies provided. Bond must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code)

No exception will be made. Failure to furnish performance bond(s) will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

D. Payment Bond

Orange County Texas will require payment bonds for the construction, repair, or alteration of public works. If the Purchasing Agent determines that a payment bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a payment bond in the full amount of the contract price is required. Said payment bond must be executed by a company authorized to do business in Texas before the contractor commences work and within 10 days after the contract award is sent to the contractor.

Payment bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

For all contracts over $50,000.00 for the construction, repair, or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a payment bond that:

A payment bond, must be issued by a State approved surety in accordance with Article 7.19-1 Bond of Surety Company; Chapter 7 of the Insurance Code, must also be for not less than one hundred percent (100%) of the contract price and remain in effect for one year beyond the date of acceptance by the Owner.

1. Is solely for the protection of all claimants supplying labor and material in the performance of work provided in the contract,
2. Is payable to the county for the use of these claimants,
3. Is in the full amount of the contract,
4. Executed by a corporate surety or sureties in accordance with the Insurance Code, and
5. Is in a form approved by the Commissioners' Court.

Payment bonds should be effective from commencement of performance until the end of the fourth month after all items of work, for the project are completed unless releases are obtained from all subcontractors and materials. Any payment bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond, and remedies provided. Bond must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

No exceptions to bond requests will be made. Failure to furnish bid bonds, performance bonds, and/or payment bonds will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

4. SPECIFICATIONS

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 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.

Specifications, which shall be the basis of sealed bids or sealed proposals submitted to the Purchasing Agent, shall be written by the user department and must allow for competitive bidding. The Purchasing Agent shall not accept or write bid specifications, which, by design, exclude legitimate competitors. The Purchasing Agent shall not use brand names unless a disclaimer is included opening the specification to competing brands of equal quality. To facilitate specification development, user departments should submit their specifications in electronic format to the Purchasing Department. The primary purpose of any specification is to provide vendors with a firm criterion about a minimum standard acceptable for products, goods, and/or services and to provide purchasing personnel with a clear guideline from which to purchase. As a result, the specification should:

- Promote competitive bidding, and
- Provide a means to make an equitable award to the lowest and best bid from a responsible bidder.

An effective specification has the following characteristics:

- Simple – Avoids unnecessary detail, but is complete enough to ensure that purchased goods or services satisfy their intended purpose(s).
- Clear- Uses understandable terminology.
- Accurate – Uses units of measure that are compatible with industry standards, identifies all quantities, and describes packing requirements. State dimensions, weight, etc., if these values can satisfy the intended purpose.
- Competitive – Identifies products, goods, and/or services that satisfy the intended purpose. Avoid unneeded "extras" that could reduce or eliminate competition and increase costs.

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 testing and inspection for acceptability of the goods or services; and
- It provides for an equitable award to the lowest and best bid from a responsible bidder.

C. Preparation

Specifications may be proposed by the user 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 may have final authority for approval of specifications. This will ensure proper quality control and avoid the proliferation of conflicting specifications. 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 must be submitted as an agenda item for the Commissioners' Court by the user Department for approval. Upon approval, the Purchasing Department will process the order.

D. Types of Specifications

There are several specification types which will be employed by the Purchasing Department. They include:

Design

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 many services.

Performance

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, the strength of the material, test methods, standards of acceptability, and recommended practices. This type of specification should be used more often for equipment.

Brand Name

Brand Name or Equal. This type of 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 Orange County.

Industry Standard

Industry Standard. This is one of the simplest specifications available. All goods made to an industry standard are identical, regardless of manufacturer, and will result in the acquisition of goods of uniform quality. An example is the UL standard for electrical products.

5. THE REQUISITION PROCESS

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 requisition authorizes the Purchasing Department to enter into a contract with a vendor to purchase goods or services on the user department's behalf. The user department may contact the Purchasing Department to obtain the cost for goods or services before a requisition is entered. If the cost exceeds the original requisition amount approved, the requisition must be re-approved by the user department.

Commissioners' Court approves all capital outlay items in the fiscal year budget process. All capital outlay requests that are submitted by the user departments during the fiscal year budget process must obtain an official quote from the Purchasing Department.

Departments must ensure funding is budgeted and available. Departments shall not submit any requisition(s) to the Purchasing Department without sufficient funds. Purchasing does not process requisitions for which there is not adequate funding without the approval of the Orange County Auditor. If funds are not available, it will be the responsibility of the user department to reconcile the expenditure(s) with the Orange County Auditor. Any submitted requisition(s) will indicate that funds are budgeted and available for processing. The user department must submit an agenda item to the Commissioners' Court for approval of any capital outlay item(s) not pre-approved for the current budget year. Any commitment to acquire goods or services without an authorized purchase order is prohibited. **Anyone obligating an expenditure of funds for goods or services before securing a purchase order may be held personally responsible for the payment**. The Purchasing Department acts as County representative on all matters pertaining to purchases.

To place an order, enter a requisition in the Tyler-ERP Pro 10 System, complete the requisition form, and complete departmental approval. It is the department's responsibility to follow their requisition to make sure it is approved. The form must include:

- Department name;
- Delivery address;
- Accounting code, must be correct for the product or service requested;
- Complete description of items requested, including part numbers if available;

- Amount budgeted must be available for goods or services requested;
- Identify grant (if applicable)
- Potential Vendor's name, address, phone number, and fax number; and
- Dollar value

This requisition is for internal use only and cannot be used by a department to order material. Do not acquire goods or services without an authorized purchase order.

To place an order by Manual Requisition, (will be used only if the Tyler-ERP Pro 10 System is inoperable) complete the requisition form and submit it to the Judge's Office. The form must include:

- Department name;
- Signature of department head or representative;
- Delivery address;
- Accounting code, must be correct for the product or service requested;
- Complete description of items requested, including part numbers if available;
- Amount budgeted must be available for goods or services requested;
- Identify grant (if applicable)
- Potential vendor's name, address, phone number, and fax number; and
- Dollar value

This form is for internal use only and cannot be used by a department to order materials directly from a vendor. Do not acquire goods or services without an authorized purchase order.

When a requisition is entered in the Tyler-ERP Pro 10 System (see section (B) below), please allow adequate time for requisition final approval and orders to be processed. Failure to allow ample time for ordering and delivery can cause problems for vendors, the Purchasing Department, and the end user.

B. Tyler-ERP Pro 10 System

Orange County is using an automated requisitioning system referred to as the Tyler-ERP Pro 10 System. Based on established budget line items, requisitions are entered into the Tyler-ERP Pro 10 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 the departmentally approved 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 Tyler-ERP Pro 10 System are not covered in this manual. The user department may contact the Purchasing Department for questions or training.

C. Types of Requisitions

The Purchasing Department classifies requisitions according to the type of action and the time required for the purchase. There are three types of requisitions:

Routine

Normal (routine) purchases have a cycle time of one to three working days after final approval of requisition.

Expedited

Purchases where the goods or services are needed sooner than the routine cycle time may be expedited. Expedited purchases do not qualify as emergency purchases and are subject to all applicable bidding requirements. Expedited purchases are for goods or services needed quickly to prevent costly delays, and therefore warrant the additional cost and effort caused by the interruption of the normal work routine. Expedited purchases should only be made when required**.** Cycle time for expedited purchase requisitions is one (1) to two (2) working days after final approval of requisition.

Note: *Cycle time* refers to the time between when a purchase requisition is assigned to a buyer for action and when an actual purchase order is placed with a vendor. Cycle time does not include the time required for delivery, or the time it takes for the final requisition approval or the user department to make corrections to budget line-item accounts, commodity codes, etc.

D. Emergency

Goods or services may be purchased under emergency conditions when immediate action is required.

- **Purchases Under $100,000:**

If the total cost is less than $100,000, the purchase should be processed as an expedited purchase requisition.

- **Purchases Over $100,000:**

If the total cost exceeds $100,000, an exemption from the requirements of the Purchasing Act must be approved by order of the Commissioners' Court. The user department must promptly notify the Purchasing Department to initiate the required approval process.

Emergency purchases may be made when the Commissioners' Court has ordered an exemption in accordance with the Purchasing Act.

Under Texas Local Government Code §262.024(a)(1), an exemption applies to "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."

E. Request for Emergency Purchase Order

Emergency purchase orders shall be used for the **IMMEDIATE PICK-UP** of items and/or services. Emergency purchase orders shall be used for the repair or prevention of costly department delays that would cause interruption of the normal work routine of Orange County and will be made only in those limited circumstances when the normal requisition process cannot be handled under routine conditions. The Purchasing Department will determine the appropriateness of each request. **Do Not acquire goods or services without an authorized purchase order. Under no circumstances are items to be picked up by the department before the issuance of an Emergency purchase order number**. **Anyone obligating an expenditure of funds for goods or services prior to securing an Emergency purchase order may be held personally responsible for the payment**.

The user department must contact the Purchasing Department to request an Emergency Purchase Order (EPO) number. When making the request, the department must provide a description of the goods or services needed, the estimated cost, and the vendor's name. A requisition must then be entered into the **Tyler ERP Pro 10 System** with all supporting documentation within **24 hours or by the next business day**. Note: Departments are hereby advised that all requests for Emergency purchase orders will indicate that funds are budgeted and available for processing. Balance funds must be monitored by the user department and must be available for use at the time of purchase. Purchasing does not process requisitions for which there is not adequate funding.

Emergency purchase orders shall not be used in lieu of the regular purchasing procedure or in lieu of a blanket purchase order**.** Orange County Purchasing Department must place all orders.

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

Equipment is generally covered by warranty provisions for various periods of time. Care should be taken to ensure that full advantage is taken of warranty provisions prior to requesting an Emergency purchase order.

F. After Hours Orders

A requisition must be entered in the Tyler-ERP Pro 10 System with proper paperwork and must be submitted to the Purchasing Department during the next business day.

G. Blanket Orders

Blanket Orders supply items on an "as-needed basis." Each blanket order will be for the current budget year and includes a maximum dollar amount within each departmental budget. Blanket orders will be utilized for items specific to that blanket order as requested by each department. Balance funds must be monitored by the user department and must be available for use at the time of each purchase. Do Not acquire goods or services without an authorized purchase order. The blanket form is available online. Complete the form as follows: Type in the description, quantity, and amount. The form will be totaled automatically. Print form. Obtain authorized signature. Forward the completed form and all paperwork to the Purchasing Department.

6. PROCUREMENT DOCUMENTS

It is important to have a basic understanding of what is meant by "procurement documents." These documents describe the full contractual relationship between a county and a supplier of goods or services. Procurement documents are:

- Solicitations – These are invitations for bids, requests for quotations, and requests for proposals. These documents may result in a binding contract.
- Offers – These are bids, proposals, and quotes made by businesses to supply goods or services.
- Contracts – These are the final signed agreements between the government and the supplier to buy/sell. A purchase order is a type of contract.
- Amendments/Change Orders – These are changes to solicitation documents, offers, and contracts.

Many other documents are created during the process of making a purchase and are scanned into the system or kept in the purchasing file, but they are not technically "procurement documents." These other documents include requests (requisitions) by departments 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; excluded parties listing; and copies of advertisements.

The purchasing Agent has established purchasing categories for the purchase of all goods and services based on the anticipated price of such goods or service. Each Category specifies the information that must be obtained before issuing a purchase order.

A. Quote Thresholds

Quote thresholds are listed in the table below.

Threshold	Quote Requirement
Purchase less than $5000	1 informal quote required
Purchase $5,001 - $49,999	2 informal quotes required
Purchase $50,000. - $99,999	3 formal quotes required
Purchase exceeding $100,000	Competitive Bidding required by the Purchasing Agent (see Section 8)

The minimum quote thresholds are exempted for:

a) The purchase meets the rerquirements of an emergency purchase.

b) The purchase meets the requirements of a sole source purchase.

c) The number of vendors/contractors providing goods or services is limited to less than the minimum requirements.

B. Purchase of items less than $5,000

- A minimum of **one informal quotation** may be obtained by telephone, fax, and email, in person or in writing.
- No formal quotations are required.
- The requesting department may either:
  - Solicit quotation, or
  - Delegate the solicitation responsibility to the Purchasing Department.
- Regardless of who obtains the quotation, the requesting department is responsible for initiating the requisition.
- Purchase may be made directly, provided they comply with Orange County Policies and budgetary constraints.

C. Purchase of items $5,001 or more but less than $49,999

- A minimum of **two informal quotations** must be obtained.
- Informal quotations may be obtained by telephone, fax, and email, in person or in writing.
- The requesting department may either:
  - Solicit quotations, or
  - Delegate the solicitation responsibility to the Purchasing Department.
- Regardless of who obtains the quotations, the requesting department is responsible for initiating the requisition.
- No formal quotations are required.
- Purchase may be made directly, provided they comply with Orange County Policies and budgetary constraints.

D. Purchase of items $50,000 or more but less than $99,999

- A minimum of **three formal quotations** must be obtained.
- Solicit written quotes. Formal quotations may be obtained by fax, email, in person, or in writing.
- The requesting department may either: Solicit quotations, or delegate the solicitation responsibility to the Purchasing Department.
- All quotes shall contain the following information:
  1. Date
  2. Vendor's name
  3. Vendor contact person's name
  4. Vendor Adress
  5. Vendor Telephone number
  6. Vendor Email Address

7. Vendor fax number (if email address is not available)
8. Description of product/service offered by vendor
9. Price per item/service. Service quotes must be broken down by labor and material costs.

- Regardless of who obtains the quotations, the requesting department must submit them to the Purchasing Department for review and approval before submitting a requisition or issuance of a purchase order.
- The requesting department remains responsible for initiating the requisition and specifying the preferred purchasing method.

E. Purchase of items greater than $100,000

- A formal sealed competitive procurement is required, including:
  - Invitation to Bid (ITB)
  - Request for Proposal (RFP)
  - Competitive Sealed Proposals
- These processes must be conducted by the Purchasing Department in accordance with the County Purchasing Act (Subchapter C, Chapter 262, Section 262.021 – 262.037 of the Texas Local Government Code).
- Exceptions to competitive bidding may be granted only upon application by the Purchasing Agent and approval by the Orange County Commissioners Court.
- All submissions will be evaluated jointly by the Purchasing Department and the requesting department.
- Final acceptance or rejection of the Purchasing Agent's recommendation rests solely with the Commiationers Court.
- No Purchasing staff member may issue a purchase order that deviates from these requirements unless a waiver has been granted by the Purchasing Agent.

Note:

If cumulative purchases to one vendor per department are anticipated to reach or exceed $100,000.00 in a fiscal year, then formal bidding procedures are required and an annual contract will be established.

7. PROCEDURES FOR PURCHASES UNDER $100,000.00

A. Policy

For purchases of goods and services totaling less than $100,000.00, the Purchasing Agent is authorized to select the goods or services to meet the requests of departments. The Purchasing Agent is authorized to select the vendor and to do all actions necessary to conclude a contract for the purchase of the goods and services, including execution of the contract without specific approval of the Commissioners' Court.

B. Considerations

In selecting the goods or services requested by the departments, the Purchasing Agent may consider the following:

- The stated needs of the department and whether the selected goods or services meet those needs;
- Available information about sources and prices of the goods and services;
- The delivery requirements of the vendor and the user department; and
- Any other information that a reasonable and prudent purchasing professional would consider in all circumstances of the purchase; or
- Whenever practical, surplus items from other departments may be transferred to meet departmental needs.

INFORMAL QUOTES

Informal Quotations are only used for purchases of items up to $49,999:

- The Purchasing Department shall attempt to solicit quotes. Informal quotations may be obtained by telephone, fax, and email, in person or in writing.
- Orange County encourages competition by contacting as many vendors as possible. Utmost care must be taken, however, to ensure that vendors are given the same information and that prices are not disclosed from one vendor to another.
- For all purchases, the Purchasing Agent or designee shall make the determination of the "most responsive bidder."
- For this section, the "most responsive bidder" shall be the bidder whose offer is determined to be the most advantageous to the County taking into consideration:

❖ The price, delivery date, results of testing samples, special needs, and requirements of Orange County,

❖ The capability, integrity, and reliability of the bidder to assure good faith performance.

❖ Any evaluation factors supplied by the requesting department and Purchasing Department to the bidder.

FORMAL QUOTES

Formal Quotation shall be used for purchases of items or services from $50,000.00 or more but less than $99,999. All quotations must be on an Orange County quote form or vendor letterhead/quote form.

- The Purchasing Department shall attempt to solicit quotes. Formal quotations may be obtained by telephone, fax, and email, in person or in writing.
- Orange County encourages competition by contacting as many vendors as possible. Utmost care must be taken, however, to ensure that vendors are given the same information and that prices are not disclosed from one vendor to another.
- For all purchases, the Purchasing Agent or designee shall make the determination of the "most responsive bidder."
- For this section, the "most responsive bidder" shall be the bidder whose offer is determined to be the most advantageous to the county taking into consideration:

❖ The price, delivery date, results of testing samples, special needs, and requirements of Orange County,

❖ The capability, integrity, and reliability of the bidder to assure good faith performance.

❖ Any evaluation factors supplied by the requesting department and Purchasing Department to the bidder.

❖ The Purchasing Agent has the authority to deviate from the policy for purchases under $100,000 if it is in the best interest of Orange County and will facilitate specific county operations.

8. COMPETITIVE BIDDING FOR PURCHASES EXCEEDING $100,000.00

A. Definitions

Competitive bidding means letting available vendors compete to provide goods and/or services.

The Texas Supreme Court described it as: "Competitive bidding requires due advertisement, giving an opportunity to bid, and contemplates bidding on the same undertaking upon each of the same material items and services covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality that they each bid upon the same terms and conditions involved in all the items and services and parts of the contract, and that the proposal specify as to all bids the same or substantially similar specifications."

The term "Formal Competitive Bidding" is generally used in public purchasing when the bidding process is in compliance with the Texas Local Government Code §262.023 and requires approval by a governing board, such as the Commissioners' Court.

Sealed Bids will be used for contracts exceeding $100,000 (but will not be limited to contracts exceeding $100,000). The Purchasing Department will solicit bids from vendors in response to the County's specifications and contractual terms and conditions. The returned, signed, and awarded the

bid, a notice of contract award letter signed by the Purchasing Agent, Purchase Order or Signed Contract will form the contract between Orange County and the successful bidder.

B. Purpose of Competitive Bidding

The first purpose of competitive bidding is to ensure that public monies are spent properly, legally, and for public projects only, and that the best possible value is received for the money.

The second purpose is to give those qualified and responsible vendors who desire to do business with Orange County a fair and equitable opportunity to do so. The use of a standard and consistent procurement process provides assurances that tax dollars are being spent properly.

The Texas Supreme Court states, "Its purpose is to stimulate competition, prevent favoritism, and secure the best work and materials at the lowest practicable price for the best interest of the taxpayers and property owners."

C. Requisition

A requisition submitted by the user Department initiates the competitive bidding process. Descriptions, part numbers, and/or specifications should be submitted with the requisition and must follow the requisition process in Section 5 of this manual.

D. Bidding Notice

After the development of specifications and preparation of the Notice to Bidders, the Purchasing Department will advertise the bid.

As outlined in the Texas Local Government Code §262.025, "A notice of a proposed purchase must be published at least once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening. Notice published in a newspaper must include"

(1) A general statement of the proposed purchase;

(2) The name and telephone number of the purchasing agent; and

(3) The county website address, if any

(a) Subsection (a) does not require more than two notices in one newspaper or limit the County from providing additional notice for longer periods or in more locations.

(b) The notice must include:

(1) The specifications describing the item to be purchased or a statement of where the specifications may be obtained;

(2) The time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;

(3) Whether the bidder should use lump-sum or unit pricing;

(4) The method of payment by the County; and

(5) The type of bond required by the bidder.

(6) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

E. Addendum

The bid opening date on the Notice to Bidders may be extended if an error is discovered, or the nature of the goods and services requires an extension. The Purchasing Agent may amend specifications to clarify the original intent or to correct clerical errors if inquiries about the meaning of the specifications indicate the need for such an amendment; if the changes are so insignificant that they are not likely to matter to the vendor in determining price or ability to respond if there is no change to the quantity or delivery requirements; and if the amendment does not change the scope of the specifications. There should be at least forty-eight (48) hours between the date of the amendment and the opening date specified in the notice. All addenda(s) will be posted on the Orange County Purchasing website www.co.orange.tx.us. Vendors are responsible for monitoring the website in order to remain informed on addenda(s).

F. Receipt of Bids

The following procedures will be adhered to when receiving bids:

- All bids will be received in the Purchasing Department and will remain with the Orange County Purchasing Department.
- All bids will be stamped with the time and date received. The date stamp clock in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received by Orange County.
- No bids will be received after the opening time on the day of bid opening. All bids received after the opening time will be returned unopened to the bidder with a letter from the Purchasing Agent notifying the bidder that the submitted bid was received after the due date and time.
- After bids are received, a secure place will be provided in the Purchasing Department for holding 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 Agent or designated Purchasing Department employee in a public forum.
- In the event a sealed bid is opened inadvertently, another Purchasing Department employee will witness that the details of the bid, especially the price, were not reviewed and the bid was sealed again immediately, and the occasion documented.

G. Public Opening of Bids

Sealed bids will be opened publicly by the Purchasing Agent or designated Purchasing Department employee as per LGC §262.026 and will be documented. Bid tabulations will be posted on the Orange County Purchasing website www.co.orange.tx.us as soon as possible.

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

H. Evaluation of Bids

The Purchasing Office will evaluate all bids, with assistance from the user department, a committee, or other designated authority, if applicable. A recommendation on the lowest responsible bid will be made to the Commissioners' Court. The Purchasing Department will evaluate bids based on:

- The relative price of the bids, including the cost of repair and maintenance if
- Heavy equipment is the subject of the bid, and the cost of delivery and hauling if road construction is involved.
- The price, delivery date, results of testing samples, special needs, and requirements of Orange County,
- The compliance of goods and services with specifications;
- The responsibility of the Vendor, including the Vendor's financial and practical ability to perform the contract; and
- The Vendor's safety record, if stated in the specifications.

The Purchasing Department will submit tabulation and award recommendations to the Commissioners' Court for inclusion on the Commissioners' Court Agenda for award.

Commissioners' Court shall either approve the recommendation or reject all bids and authorize the Purchasing Agent to re-bid the goods and/or services.

I. Contract Award

The Purchasing Agent shall recommend contract award as per Texas Local Government Code §262.027 to the Commissioners' Court in session. The Commissioners' Court shall:

(1) Award the contract to the responsible bidder(s) who submits the lowest and best bid; or

(2) Reject all bids and publish a new notice.

(b) If two 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.

Texas Local Government Code §262.027(c) reads, "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 an opportunity to appear before the Commissioners' Court

and present previously unconsidered evidence concerning the lower bid as best, which may include evidence of the bidder's responsibility."

Texas Local Government Code §262.027(g) reads: "If after the award the successful bidder fails to qualify for required bonds, or is otherwise unable to meet requirements of the award, the Commissioners' Court may award the contract to the next bidder in order of ranking as the lowest and best bid."

J. Contract Administration

The user department will be responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be shared with Purchasing. If, after clarification, the vendor complies with expected performance standards, no further documentation will be required by purchasing. If poor performance or non-compliance with the contract is evidenced, purchasing will be responsible for initiating corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining compliance with the contract and will consult with the County Attorney and Commissioners' Court before taking any steps toward suspension or termination of the contract.

K. Re-bidding of Annual Contracts

The Purchasing Department monitors the expiration dates of all contracts that are maintained by the Purchasing Department. Purchasing will contact user departments to determine if annual contracts need to be re-bid or renewed. The user department will advise Purchasing of any additions, deletions, or corrections.

9. Competitive Proposals for Purchases Exceeding $100,000.00

A. Definitions

Texas Local Government Code §262.030, States competitive proposals may be solicited through a Request for Proposal (RFP).

Formal sealed Requests for Proposals (RFPs) may be used for the purchase of insurance, high technology items, landscape maintenance, travel management, recycling, and special services exceeding $100,000.00. The RFP will solicit proposals from vendors in response to the County's requirements and contractual terms and conditions. A formal contract must be approved by the Commissioners' Court.

"High technology" goods or services means goods or services of a highly technical nature, including:

- Data processing equipment and software and firmware used in conjunction with data processing equipment;
- Telecommunications, radio, and microwave systems;
- Electronic distributed control systems, including building energy management systems; and
- Technical services related to those goods and services.

Formal sealed Requests for Proposals (RFPs) will be used as per LGC §262.030 (d) "to purchase other items when the County official who makes purchases for the County determines, with the consent of the Commissioners' Court, that it is in the best interest of the County to make a request for proposals."

B. Procedures

Competitive proposals shall be accomplished as follows:

Requisition

A requisition must be submitted. The requisition must include the budget line item(s) from which the purchase will be funded before a competitive proposal can be prepared and must follow the requisition process in Section 5 of this manual. Requirements and specifications must be forwarded to the Purchasing Department with the requisition number indicated on the appropriate paperwork. If the RFP is for high-technology goods and services, the Management Information Systems (MIS) Department must review it.

C. Notice

After the development of requirements and preparation of the Request for Proposal, the Purchasing Department will publish a notice.

As outlined in the Texas Local Government Code §262.025, "A notice of a proposed purchase must be published at least once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening. Notice published in a newspaper must include"

(1) A general statement of the proposed purchase;

(2) The name and telephone number of the purchasing agent; and

(3) The county website address, if any

(a) Subsection (a) does not require more than two notices in one newspaper or limit the County from providing additional notice for longer periods or in more locations.

(b) The notice must include:

(1) The specifications describing the item to be purchased or a statement of where the specifications may be obtained;

(2) The time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;

(3) Whether the bidder should use lump-sum or unit pricing;

(4) The method of payment by the county; and

(5) The type of bond required by the bidder.

(c) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

As outlined in the Texas Local Government Code §262.025 (b), "The request for proposals must specify the relative importance of price and other evaluation factors."

D. Receipt of Competitive Proposals

The following procedures will be adhered to when receiving proposals:

- All proposals will be received in the Purchasing Department and will remain with the Orange County Purchasing Department.
- All proposals will be stamped with the time and date received. The date stamp clock in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time proposals were received by Orange County.
- No proposals will be received after the opening time on the day of proposal opening. All proposals received after the opening time will be returned unopened to the vendor with a letter from the Purchasing Agent notifying the vendor that the submitted proposal was received after the due date and time.
- After proposals are received, a secure place will be provided in the Purchasing Department for holding of the proposals until the proposal opening date. The proposals are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Agent or designated Purchasing Department employee in a public forum.
- In the event a sealed proposal is opened inadvertently, another Purchasing Department employee will witness that the details of the proposal, especially the price, were not reviewed and the proposal was sealed again immediately, and the occasion documented.

E. Opening of Proposals

Sealed proposals will be opened publicly by the Purchasing Agent or designated Purchasing Department employee as per LGC §262.030 (c) and will be documented.

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

Proposals will be opened to avoid disclosure of contents to competing proponents and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

F. Evaluation of Proposals

The Purchasing Department will evaluate all proposals, with assistance from the user department, a committee, or other designated authority, if applicable.

The RFP must specify the relative importance of price and other evaluation factors. When the evaluation factors outlined in the request for proposal state award will be based on specific criteria a committee must be appointed by the Commissioners' Court. Each committee member will complete a non-disclosure statement and qualifications evaluation factor form.

G. Negotiations

All negotiations and conversations with proponents must be in coordination with the Purchasing Agent, committee, or other designated authority by Orange County. As per LGC §262.030 (b), "The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest and best-evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals."

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

H. Contract Award

The award of the contract shall be made by the Commissioners' Court to the responsible proponent whose proposal is determined to be the lowest and best-evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the RFP.

I. Contract Administration

The user department will be responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be sent to the Purchasing Department. If, after clarification, the vendor complies with expected performance standards, no further documentation will be required by Purchasing. If poor performance or non-compliance with

the contract is evidenced, Purchasing will be responsible for initiating corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining compliance with the contract and will consult with the County Attorney and Commissioners' Court before taking any steps toward suspension or termination of the contract.

10. STATE, COOPERATIVE AND FEDERAL CONTRACT PURCHASES

A. Introduction

The laws describe the authority of local governments to purchase goods and services through the Texas Building and Procurement Commission's Vendors. These laws allow purchasing from vendors with which the State has entered contracts as a result of competitive bidding procedures.

B. Authority to Purchase from State Purchasing, Cooperative, and Federal Contract Purchasing Programs

Texas Local Government Code §271.081 through §271.083 requires the Comptroller shall establish a program by which the Comptroller performs purchasing services for local governments authorizing Orange County to participate in the program.

Texas Local Government Code §271.101 through §271.102 reads; "A local Government may participate in cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state."

Texas Local Government Code §271.103 reads; " A local government may purchase goods or services available under Federal supply schedules of the United States General Services Administration to the extent permitted by federal law."

Texas Government Code 2155.502 states the County may purchase goods and services from a schedule of multiple award contracts developed by TPASS for the Texas Multiple Award Schedule (TXMAS).

The Interlocal Cooperation Act of the Texas Government Code 791.001 authorizes local governments to contract directly with other governments to increase their efficiency and effectiveness, Texas Government Code, Section 791.025(c) states that a local government that purchases goods and any services reasonably required for the installation, operation, or maintenance of those goods under the Interlocal Cooperation Act satisfies the requirement of the local government to seek competitive bids for the purchase of goods and their services.

National cooperatives such as Houston Area Council of Governments (H-GAC), Texas Association of School Boards (BuyBoard), the County participates in the purchasing programs of various local, state and Cooperative Purchasing Network (TCPN), OMNIA Partners, Department of Information Resources

(DIR), Federal Supply Schedules (GSA), Texas Multiple Award Schedule (TXMAS), Texas Correctional Industries (TCI), Choice Partners, The Interlocal Purchasing System Program (TIPS) and Work Quest.

Under the Cooperative Purchasing Program, local government entities may purchase a variety of Information Technology (IT) products, software, and services from contracts awarded under GSA Federal Supply Schedule 70, Information Technology.

Local Government entities may also purchase alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services from contracts awarded under GSA Federal Supply Schedule 84, security, and law enforcement.

The Commissioners' Court authorizes the Purchasing Agent to execute all contracts for contract purchases that are procured in compliance, including purchases more than $100,000.00, if funding for the purchase was previously approved by the Commissioners' Court. The Purchasing Agent acts for Orange County in all matters regarding the purchase of goods and services from a vendor under any contract based on any State Purchasing Program. Orange County is responsible for making payment directly to these vendors.

C. Policy

Orange County participates in the purchasing program of the State Purchasing and Texas Building and Procurement Commission for local governments.

D. Official Representative

The Purchasing Agent is designated to act for Orange County at the direction of the Commissioners' Court in all matters pertaining to purchasing, including the purchase of goods and services from the vendor under any contract. Orange County is responsible for making payments directly to the vendor.

E. Procedure

The Purchasing Agent is responsible for submitting requisitions to the Texas Building and Procurement Commission under any contract or sending purchase orders directly to vendors and reports to the commission on actual purchases in compliance with the commission's regulations. The Purchasing Department is responsible for the vendor's compliance with all the conditions of delivery and quality of the purchased goods and services. The Purchasing Agent is authorized to sign and deliver all necessary documents for purchases under this program made on behalf of Orange County.

11. PROCUREMENT OF PROFESSIONAL SERVICES

A. Introduction

The two principal laws with which the Purchasing Department must comply are the Professional Services Procurement Act and the Purchasing Act. Texas Gov't Code, Title 10, Ch, 2254, Subch. A and the Texas Local Gov't Code Ann., title 8, 262, subch. C.

There are two kinds of professional services:

- Those professional services specifically defined under the Professional Services Procurement Act; and
- Those "other" professional services that are not specifically defined under either the Professional Services Procurement 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 or the Commissioners' Court approves the solicitation.

C. Professional Services Procurement Act Definition

Professional services are defined in the Professional Services Procurement Act as:

- Those within the scope of the practice of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising or professional nursing as defined by the laws of the State of Texas; and/or
- Those performed by any certified public accountant, architect, landscape architect, land surveyor, physician, surgeon, optometrist, professional engineer, licensed real estate appraiser, registered nurse in connection with his professional employment or practice.

The Act states that contracts for the procurement 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.

D. Procedure

Departments shall forward a requisition to the Purchasing Department when professional services are required. The requisition 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; and
6. Suggested professionals.

Based on the information provided in the requisition, applicable state laws, and all relevant facts, the Purchasing Agent will make a determination as to whether a formal RFQ or an informal procurement process will be implemented. Unless specifically exempted by the Commissioners' Court, all professional services anticipated to cost over $100,000.00 will be procured using the formal RFQ process.

The County shall rank firms based on their qualifications and then enter negotiations with the most qualified firm based on a fair and reasonable price. If the County is unable to negotiate a satisfactory contract with the most highly qualified vendor, negotiations will formally end with that person or firm. The next most highly qualified vendor will then be asked to negotiate. Negotiations are continued in this sequence until a contract is finalized. If any contract is entered into with one of the above-mentioned professionals on the basis of a competitive bid, it is contrary to state law and is void.

E. 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 Procurement 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.

12. CONSTRUCTION PROCUREMENT

A. Purchasing Statutes

Texas Local Government Code §262.011 (e) 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 $100,00.00…bidding on the contract must be accomplished in the manner provided by this subchapter."

B. Requisition

Commissioners' Court must review the project and specifications for approval. A requisition must be submitted and will serve as the initial notification that a competitive bid is needed and must follow the

requisition process in Section 5 of this manual. A draft copy of the plans and specifications should be submitted to the Purchasing Department with the requisition number indicated on the appropriate paperwork.

C. Bidding Notice

The Purchasing Department will publish the advertisement for bid as per LGC 271.025, which must include the following:

(1) Description of work;

(2) Location at which the bidding documents, plans, specifications, or other data may be examined without charge by all bidders.

(3) Time and place for submitting bids and time and place that bids will be opened.

(b) The advertisement must be published as required by law. The advertisement must be published at least twice in one or more newspapers of general circulation in the county in which the work is to be performed. The second publication must be on or before the 10th day before the first date bids may be submitted.

(c) The governmental entity must mail a notice containing the information required under Subsection (a) to any organization that:

(1) Requests in advance that notices for bids be sent to it;

(2) Agrees in writing to pay the actual cost of mailing the notice; and

(3) Certifies that it circulates notices for bids to the construction trade in general.

(d) The governmental entity shall mail a notice required under Subsection (c) on or before the date the first newspaper advertisement under this section is published.

D. Bonding Requirements

Orange County Texas will require bonds for any construction, repair, or alteration of public works. No purchase order will be released until the vendor provides all required documents to Orange County Purchasing.

The successful bidder shall be required, at his own expense, to furnish the Orange County Purchasing Agent within ten (10) days of notification of award with certified copies of all bond(s) as per bid specifications. Failure to furnish bond(s) will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

E. Minimum Bid Bonds

Bid bonds will not be required for contracts that are valued at less than $50,000.00.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

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.

F. Bid Bond

Orange County Texas will require bonds for the construction, repair, or alteration of public works. A bid bond MUST be submitted with any bid over $100,000.00. The bid bond shall be in the amount of 5% of the bid price and is to be issued by a surety company authorized to do business in Texas.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

No exception will be made. Failure to furnish a bid bond or bonds will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

G. Performance Bonds

Orange County Texas will require performance bonds for the construction, repair, or alteration of public works.

For all contracts in excess of $100,000.00 for the construction, repair, or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a performance bond that:

1. Is payable to the county,
2. Is in the full amount of the contract,
3. Is conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents,
4. Is solely for the protection of the county,
5. Executed by a corporate surety or sureties in accordance with the Insurance Code, and
6. The bond must remain in effect for one year beyond the date of acceptance by the Owner.

Any performance bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond, and remedies provided. Bond must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code)

No exception will be made. Failure to furnish a bid bond or bonds will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

H. Payment Bond

Orange County Texas will require payment bonds for the construction, repair, or alteration of public works. If the Purchasing Agent determines that a payment bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a payment bond in the full amount of the contract price is required. Said payment 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.

Payment bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

For all contracts in excess of $100,000.00 for the construction, repair, or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a payment bond that must be issued by a State approved surety in accordance with Article 7.19-1 Bond of Surety Company; Chapter 7 of the Insurance Code, must also be for not less than one hundred percent (100%) of the contract price and remain in effect for one year beyond the date of acceptance by the Owner.

1. Is solely for the protection of all claimants supplying labor and material in the performance of work provided in the contract,
2. Is payable to the county for the use of these claimants,
3. Is in the full amount of the contract,
4. Executed by a corporate surety or sureties in accordance with the Insurance Code, and
5. Is in a form approved by the Commissioners' Court.

Payment bonds should be effective from commencement of performance until the end of the fourth month after all items of work, for the project are completed unless releases are obtained from all subcontractors and materials. Any payment bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond, and remedies provided. Bond must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

No exception will be made. Failure to furnish payment bond(s) will result in the bid being declared non-responsive. Non-responsive bids will not be considered for award.

I. 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 clock in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received by Orange County.
3. No bids will be received after the opening time on the day of the bid opening. All bids received after the opening time will be returned unopened to the bidder along with notification that the bid was received after the due date and time.
4. After bids are received, the Purchasing Department will provide a secure place 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 Agent or designated Purchasing Department employee in a public forum.

5. In the event a sealed bid is opened inadvertently, another Purchasing Department employee will witness that the details of the bid, especially the price, were not reviewed and the bid was sealed again immediately, and the occasion documented.

J. Public Opening of Bids

Sealed bids will be opened publicly by the Purchasing Agent or designated Purchasing Department employee as per LGC §262.026 and will be documented. Bid tabulations will be posted on the Orange County Purchasing website www.co.orange.tx.us as soon as possible.

The **Purchasing** Agent or designated Purchasing Department employee 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 if the Commissioners' Court determines that the extension is in the best interest of the County. All bids, including those received before an extension is made, must be opened at the same time.

K. Evaluation of Bids

All bids will be evaluated and a 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 may 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 Commissioners' Court has adopted a definition of safety that is included in the bid; and
4. The past performance of the vendor.
5. As stated in bid specifications

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.

L. Contract Award

The Purchasing Agent, Maintenance Supervisor, or designated outside agency will recommend contract award to Commissioners' Court in session. The Court shall as per Texas Local Government Code 262.027.

(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.

(b) 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.

(c) 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:

(1) notice of the proposed award and

(2) an opportunity to appear before the Commissioners' Court and present previously unconsidered evidence concerning the lower bid as best, which may include evidence of the 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 and be on file in the Purchasing Department.

M. Contract Administration

The Project Manager, Maintenance Supervisor, or designated outside agency or 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, in the sole discretion of the user department, performance or non-compliance with the contract is evident; the user department will be responsible to initiating 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.

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 Maintenance Supervisor has the authority to give any directions directly to the contractor.

The Project Manager, Maintenance Supervisor or designated outside agency will take all steps related to correcting non-compliance with the contract but must consult with the Commissioners' Court or 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 and Commissioners' Court as the initial steps toward potential litigation.

13. EXEMPTIONS TO THE COMPETITIVE PROCUREMENT PROCESS

A. Purchasing Act

Many goods and services can be exempted from the competitive procurement 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 from current funds, bond funds, or through time warrants. The following is a list of these circumstances:

- 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
- Goods and services necessary to preserve or protect the public health and safety of the residents of the County
- Goods and services necessary due to unforeseen damage to public property
- Personal or professional services
- 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
- Any land or right-of-way
- Goods and services that can only be obtained from one source, including
- Goods and services for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies
- Films, manuscripts, or books
- Electric power, gas, water, and other utility services
- Captive replacement parts or components for equipment
- An item of food
- Personal property sold at auction by a state licensed auctioneer
- In a going-out-of-business sale held in compliance with Subchapter F, Chapter 17, Business and Commerce Code or
- By a political subdivision of this state, a state agency, or federal government entity
- Any work performed under a contract for community and economic development contract made by a County under Section 381.004;
- or vehicle and equipment repairs.
- The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the Commissioners' Court by order grants the exemption and if:
- The lease or agreement has gone through the competitive bidding procedure within the preceding year

- The renewal or extension does not exceed one year and the renewal or extension is the first renewal or extension of the lease or agreement
- If an item exempted under Subsection (a) (7) is purchased, the Commissioners' Court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

B. Public Property Finance Act

Texas Local Government Code 271.041 (C) lists all the circumstances when exemptions are available for purchases made from a 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 the 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 vendor that will be submitted for acceptance by the Commissioners' Court and must be entered in the minutes of the meeting of Commissioners' Court. The statement shall include the existence of only one source, and specifically noting which type of listed sole source goods or services is being purchased. Sole source is defined as: only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation. Goods or services for which competition is precluded because of the existence of patents, copyrights, secret process, or monopolies.

14. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS

Texas Local Government Code 271.905 (b) reads, "In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government and whose bid is within three percent (3%) of the lowest bid price received by the local government from a bidder who is not a resident of the local government, the local government may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government.

(d) This section does not prohibit a local government from rejecting all bids.

15. RENEWAL OF EQUIPMENT LEASES AND MAINTENANCE CONTRACTS

Texas Local Government Code 262.024 (b) reads, "The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the Commissioners' Court by order grants the exemption, and if:

(1) the lease or agreement has gone through the competitive bidding procedure 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 agreement.

Texas Local Government Code 262.024 (c) reads, "If an item exempted under Subsection (a) (7) is purchased, the Commissioners' Court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect."

Contracts and/or renewals may be made ONLY by Commissioners' Court approval and agreement between Orange County and the offeror. Contracts for service and repair of equipment are generally established annually or at the acquisition of the equipment. The Purchasing Department will coordinate service agreements. Departments will contact authorized vendors when service/repair of equipment is needed.

16. DEBARMENT AND SUSPENSION

In an effort to provide assurance to the Federal Government that the State of Texas and its sub-recipients comply with Federal Executive Order12549, 44 CFR 13.35 ("Sub-awards to debarred and suspended parties"), and the

Texas Uniform Grant Management System (UGMS), the Texas Department of Public Safety/Texas Homeland Security-State Administrative Agency requires all Homeland Security Grant Program sub-recipients (to include all programs administered by the TXDPS/THS-SAA) check the debarment status of all vendors before contracting with or making any purchases with funds from any federal grant.
The Excluded Parties Listing Systems (EPLS) is an electronic database of parties excluded from federal procurement and non-procurement programs and is located at https://www.SAM.Gov. The EPLS identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits.

A. AUTHORITY

Executive Order 12549 – Debarment and Suspension

B. POLICY

Prior to procuring or entering into contract(s) for any goods/services, the sub-recipient must check debarment status of the vendor using the EPLS system (https://www.SAM.Gov) and document that verification has occurred. This policy applies to the procurement of all goods or services regardless of unit price or quantity.
All purchases with grant Funds shall comply with the rules, standards, or procedures as required by the granting agency. These requirements will include but is not limited to adherence to Uniform Grant Management Standards, Code of Federal Regulations, Single Audit Act, Texas Homeland Security State Administrative Information Bulletins, and any other applicable regulations specific to any and all grant funding awarded to Liberty County.
Purchases requested from grant funds must include the following information on the requisition from the requesting department:

- ✓ Grant Name & Fund Number
- ✓ Vendor Debarment Information
- ✓ Verifiable documentation for all purchases approved by the Commissioners Court

The Purchasing Agent and or designee should seek approval from the County Grant Administrator prior to authorizing any purchases from grant funds.

C. OFFICIAL REPRESENTATIVE

The County Purchasing Agent or designee shall verify the debarment status of all vendors prior to utilizing Homeland Security Grant Funds, using the EPLS system (SAM.gov).

D. PROCEDURE

- ➢ Go to the EPLS Website (https://www.SAM.Gov).
- ➢ The County Purchaser or their agent will search the EPLS system for the vendor.
- ➢ If the vendor is found to be debarred, the vendor may not be used for procurements utilizing Homeland Security Grant Funds.
- ➢ If the vendor is found not to be debarred, print the screen page and retain with the procurement documentation.
- ➢ A copy of the screen print indicating the vendor is not debarred, at the time of the procurement, must be included with the supporting documentation submitted to the Texas Homeland Security State Administrative Agency requesting reimbursement or advance.

E. SAA Monitoring

During monitoring and reviews, sub-recipients must be able to provide proof of a written policy requiring verification of debarment status. Records of vendors verified should be retained for audit purposes (maintain a copy of the screen print verification from the EPLS website) throughout the record retention period for the particular grant.

17. CONTRACT WITH PERSON INDEBTED TO COUNTY

Texas Local Government Code §262.0276 states:

(a) By 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.

18. RECEIPT OF GOODS

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, sign, and date on the appropriate receiving documentation, forward to Purchasing Department for processing.

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.

19. MODIFICATIONS OF CONTRACTS OR PURCHASE ORDERS

During the term of a contract or purchase order, it may be necessary to make changes. These changes can be minor, administrative such as address or they can be substantial changes that affect the price and delivery. Both parties must agree to any modifications. Terms and conditions in the original contract set forth the situations under which the County may exercise a right to modify the contract without the contractor or vendor's consent.

The Purchasing Agent may modify the contract or purchase orders if the changes are within the general scope of the contract including the changes to any of the following:

Note: All Construction project modifications must be approved by the Commissioners' Court.

- Method of shipment or packing
- Time of delivery
- Method of delivery
- Place of delivery
- Correction of errors of a general administrative nature
- Time extensions allowed by the contract terms and conditions
- Assignments of payment
- Complete cancellation of an order
- Cancellation of certain items of the purchase order
- Changing general description
- Changing vendor's name, vendor number, or address
- Addition of items, if within budget cost

- Changing unit prices

- Texas Local Government Code Sec. 262.0305. MODIFICATION AFTER AWARD.
  (a) After the award of a contract but before the contract is made, the county official who makes purchases for the county may negotiate a modification of the contract if the modification is in the best interests of the county and does not substantially change the scope of the contract or cause the contract amount to exceed the next lowest bid.
  (b) For the modified contract to be effective, the commissioner's court must approve the contract.
  Added by Acts 1989, 71st Leg., ch. 1250, Sec. 11, eff. Sept. 1, 1989.
- Sec. 262.031. CHANGES IN PLANS AND SPECIFICATIONS.
  (a) If it becomes necessary to make changes in plans, specifications, or proposals after a contract is made or if it becomes necessary to increase or decrease the quantity of items purchased, the commissioner's court may make the changes. However, the total contract price may not be increased unless the cost of the change can be paid from available funds.
  (b) If a change order involves an increase or decrease in cost of $50,000 or less, the commissioner's court may grant general authority to an employee to approve the change orders. However, the original contract price may not be increased by more than 25 percent unless the change order is necessary to comply with a federal or state statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made. The original contract price may not be decreased by 18 percent or more without the consent of the contractor.

  Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 104, Sec. 1, eff. May 7, 1993; Acts 1993, 73rd Leg., ch. 891, Sec. 1, eff. June 19, 1993; Acts 1995, 74th Leg., ch. 746, Sec. 4, eff. Aug. 28, 1995.

20. DISCLOSURE OF INTERESTED PARTIES, FORM 1295

Sec. 2252.908. DISCLOSURE OF INTERESTED PARTIES.
(a) In this section:

(1) "Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

(2) "Governmental entity" means a municipality, county, public school district, or special-purpose district or authority.

(3) "Interested party" means a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.

(4) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(b) This section applies only to a contract of a governmental entity or state agency that:

(1) requires an action or vote by the governing body of the entity or agency before the contract may be signed;

(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.

(c) Notwithstanding Subsection (b), this section does not apply to:

(1) a sponsored research contract of an institution of higher education;

(2) an interagency contract of a state agency or an institution of higher education;

(3) a contract related to health and human services if:

(A) the value of the contract cannot be determined at the time the contract is executed; and

(B) any qualified vendor is eligible for the contract;

(4) a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;

(5) a contract with an electric utility, as that term is defined by Section 31.002, Utilities Code; or

(6) a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.

(d) A governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, 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.

(e) The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes:

(1) a list of each interested party for the contract of which the contracting business entity is aware; and

(2) a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the following form:

"My name is _____, my
date of birth is _____, and my address is

_____, _____, _____, _____,
(Street) (City) (State) (Zip Code)
_____. I declare under penalty of
(Country)
perjury that the foregoing is true and correct.
Executed in _____ County, State of _____, on the _____ day of _____, _____.
(Month) (Year)

_____
Declarant".

(f) Not later than the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties required under this section, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission.

(f-1) A contract described by Subsection (b) entered into by a governmental entity or state agency is voidable for failure to provide the disclosure of interested parties required by this section only if:

(1) the governmental entity or state agency submits to the business entity written notice of the business entity's failure to provide the required disclosure; and

(2) the business entity fails to submit to the governmental entity or state agency the required disclosure on or before the 10th business day after the date the business entity receives the written notice under Subdivision (1).

(g) The Texas Ethics Commission shall adopt rules necessary to implement this section, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 1024 (H.B. 1295), Sec. 3, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 526 (S.B. 255), Sec. 5, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 17, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1070 (H.B. 1495), Sec. 2, eff. June 14, 2019.
Acts 2023, 88th Leg., R.S., Ch. 424 (H.B. 1817), Sec. 1, eff. June 9, 2023.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 389 (H.B. 679), Sec. 1
For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1008 (H.B. 2518), Sec. 1, see other Sec. 2252.909.

21. CONFLICTS OF DISCLOSURE

CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION

Sec. 176.001. DEFINITIONS.

In this chapter:

(1) "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

(1-a) "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

(1-b) "Charter school" means an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.

(1-c) “Commission" means the Texas Ethics Commission.

(1-d) "Contract" means a written agreement for the sale or purchase of real property, goods, or services.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.

(2-a) "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

(2-b) "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

(2-c) "Goods" means personal property.

(2-d) "Investment income" means dividends, capital gains, or interest income generated from:

(A) a personal or business:

(i) checking or savings account;

(ii) share draft or share account; or

(iii) other similar account;

(B) a personal or business investment; or

(C) a personal or business loan.

(3) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, water district created under Subchapter B, Chapter 49, Water Code, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity;

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or

(C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions.

(6) "Services" means skilled or unskilled labor or professional services, as defined by Section 2254.002, Government Code.

(7) "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 1, eff. May 25, 2007.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 1, eff. September 1, 2015.

Sec. 176.002. APPLICABILITY TO VENDORS AND OTHER PERSONS.

(a) This chapter applies to a person who is:

(1) a vendor; or

(2) a local government officer of a local governmental entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee or agent of an entity described by Subdivision (1), acting in the employee's or agent's official capacity.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 2, eff. May 25, 2007.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 2, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 3, eff. September 1, 2015.

Sec. 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED.

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor; or

(C) has a family relationship with the local government officer.

(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

(1) a political contribution as defined by Title 15, Election Code; or

(2) food accepted as a guest.

(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.

(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(e) The commission shall adopt the conflicts disclosure statement for local government officers for use under this section. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a)(2)(A), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor during the 12-month period described by Subsection (a)(2)(B) if the aggregate value of the gifts accepted by the officer or a family member from that vendor exceeds $100;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Subsection (a)(2)(B); and

(3) the signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 3, eff. May 25, 2007.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 4, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 5, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 9(1), eff. September 1, 2015.

Sec. 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE.

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire:

(1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity;

(2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the vendor;

(3) identify each employment or business relationship described by Subdivision (1) with respect to which the vendor receives, or is likely to receive, taxable income, other than investment income, that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity; and

(4) describe each employment or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of one percent or more.

(d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person who is both a local government officer and a vendor of a local governmental entity is required to file the questionnaire required by Subsection (a)(1) only if the person:

(1) enters or seeks to enter into a contract with the local governmental entity; or

(2) is an agent of a person who enters or seeks to enter into a contract with the local governmental entity.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(i) The validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 6, eff. May 25, 2007.
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 9, eff. May 25, 2007.
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.005, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 6, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 9(3), eff. September 1, 2015.

Sec. 176.0065. MAINTENANCE OF RECORDS.

A records administrator shall:

(1) maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section 176.006; and

(2) maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 8, eff. May 25, 2007.

Redesignated and amended from Local Government Code, Section 176.011 by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 7, eff. September 1, 2015.

Sec. 176.008. ELECTRONIC FILING.

The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Sec. 176.009. POSTING ON INTERNET.

(a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that website. This subsection does not require a local governmental entity to maintain an Internet website.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 847, Sec. 3(b), eff. January 1, 2014.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 7, eff. May 25, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 76, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 847 (H.B. 195), Sec. 3(b), eff. January 1, 2014.

Sec. 176.010. REQUIREMENTS CUMULATIVE.

The requirements of this chapter are in addition to any other disclosure required by law.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Sec. 176.012. APPLICATION OF PUBLIC INFORMATION LAW.

This chapter does not require a local governmental entity to disclose any information that is excepted from disclosure by Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 8, eff. May 25, 2007.

Sec. 176.013. ENFORCEMENT.

(a) A local government officer commits an offense under this chapter if the officer:

(1) is required to file a conflicts disclosure statement under Section 176.003; and

(2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

(b) A vendor commits an offense under this chapter if the vendor:

(1) is required to file a conflict of interest questionnaire under Section 176.006; and

(2) either:

(A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

(B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

(c) An offense under this chapter is:

(1) a Class C misdemeanor if the contract amount is less than $1 million or if there is no contract amount for the contract;

(2) a Class B misdemeanor if the contract amount is at least $1 million but less than $5 million; or

(3) a Class A misdemeanor if the contract amount is at least $5 million.

(d) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.

(e) The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest questionnaire required by Section 176.006.

(f) It is an exception to the application of Subsection (a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.

(g) It is an exception to the application of Subsection (b) that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the local governmental entity of the alleged violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 8, eff. September 1, 2015.

22. FEDERAL FUNDED CONTRACTS – PROCUREMENT STANDARDS AND ASSOCIATED MATTERS

Orange County shall comply with all requirements outlined under Chapter 2 CFR Part 200 when excecuting procurements using federal funds, including but not limited to the following:

I. Orange County shall comply with all **Sections** 2 **C.F.R.** §§ **200.318** - **200.326.**

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

a. Orange County shall comply with all applicable state and local laws and regulations, provided that the procurements also conform to applicable Federal law and standards.

b. Orange County shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

c. Officers, employees, and agents of Orange County shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

d. Orange County shall avoid acquisition of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

e. Officers, employees, and agents of Orange County are encouraged to enter into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

f. Orange County shall use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

g. Orange County shall use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

h. Orange County shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resource.

i. Orange County shall maintain records sufficient to detail the history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.

j. Orange County may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

i. The actual cost of materials; and

ii. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

k. If a time and material contract is necessary, Orange County shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

l. Orange County shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims.

II. Orange County shall comply with all requirements as outlined in 2 CRF 200.321 regarding inclusive contracting practices with small and minority businesses, women's business enterprises, and labor surplus area firms.

a. Orange County shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are given opportunities to compete.

b. Affirmative steps shall include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

III. Officers, employees, and agents of Orange County shall comply with all requirements as outlined in 2 CRF 200.322 regarding the procurement of recovered materials.

a. Orange County and its contractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that improves energy and resource recovery;
b. and establishing an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

IV. Orange County shall comply with all requirements as outlined in 2 CRF 200.320 regarding the allowable methods for procurement utilizing federal funds and shall also comply with the County Purchasing Policy. The allowable purchasing methods and requirements include:

a. Purchases up to $3,000 (Micro-Purchases): Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. To the extent practicable, Orange County shall distribute micro-purchases equitably among qualified suppliers. Procurements must also comply with all other requirements for competition under Orange County Policy.
b. Purchases above $3,000 and below $50,000 (Small Purchases): Price or rate quotations must be obtained from an adequate number of qualified sources. Procurements must also comply with all other requirements for competition under Orange County Policy.
c. Purchases of 50,000 or more must comply with all requirements for competition under Orange County Policy and should also include one of the following options:

i. Procurement by sealed bids with formal advertising is required. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid,

conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction.

1. Should sealed bids be used, they shall ensure an adequate number of suppliers and a detailed invitation for bid that includes the time and place for bid;
2. A firm fixed price contract will be granted to the lowest responsive bidder;
3. Any bid may be rejected if there is a sound documented reason.

d. Procurement by competitive proposals may be used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
2. Proposals must be solicited from an adequate number of qualified sources;
3. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
5. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

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

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

A. Regulatory Compliance – Procurement (2 CRF § 200.318 – § 200-326)

Orange County shall comply with all requirements as outlined in 2 CRF § 200.318 – § 200-326 regarding the requirements for federally funded contracts across a broad range of granting agencies. The County, a non-Federal entity and generally a subrecipient in these grant programs, is subject to these requirements. Sections 200.318 through 200.326, as such regulations exist on the date of the Purchasing Agent's adoption of these policies, follow:

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

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

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

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made oflease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also§ 200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of

procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non- Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non- Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

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

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015; 80 FR 45395, July 30, 2015

2 C.F.R. § 200.319. Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;
(2) Requiring unnecessary experience and excessive bonding;
(3) Noncompetitive pricing practices between firms or between affiliated companies;
(4) Noncompetitive contracts to consultants that are on retainer contracts;
(5) Organizational conflicts of interest;
(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administrativelyimposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec.19, 2014

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

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

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:
(i) A complete, adequate, and realistic specification or purchase description is available;
(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:
(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost- reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
(2) Proposals must be solicited from an adequate number of qualified sources;
(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

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

(e) [Reserved]

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

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

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

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept 10, 2015

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

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

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

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

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014

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

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E-Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting mustnot be used.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

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

(a] The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

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

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has

made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

69 FR 26280, May 11, 2004; 78FR 78608, Dec. 26, 2013, unless otherwise noted

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

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 2OO-Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

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

2 C.F.R. Part 200, Appendix II is also applicable, and requires as ollows: 2 C.F.R. Part, 200, Appendix II

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

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

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

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part SJ. Under40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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

(H) Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management

(SAM), in accordance with the 0MB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

(J) See §200.322 Procurement of recovered materials.

78 FR 78608, Dec. 26, 2013, as amended at79 FR 75888, Dec.19, 2014

B. Advance Payment Requirements and Procedures.

This section of the procurement system of Orange County, Texas ("County") a non-Federal entity other than a state, is intended to provide written procedures to implement the requirements of 2 CRF 200.305, including establishing payment methods to minimize the time elapsing between the transfer of funds from the United State Treasury or any pass-through entity and the disbursement by the County whether the payment is made by electronic funds or transfer, or issuance or redemption of checks, warrants, or payment by other means, to meet Federal standards for fund control and accountability.

Advance payments received by the County shall be limited to the minimum amounts needed and shall be timed to be in accordance with the actual, immediate cash requirements of the County in carrying out the purpose of the approved program or project, with the timing and amount of advance payments to be as close as is administratively feasible to the actual disbursements by the County for direct program or project costs and the proportionate share of any allowable indirect costs.

1) The County shall make timely payments to contractors in accordance with the contract provisions.

2) Whenever possible, advance payments shall be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the County.

3) Advance payment mechanisms including Treasury checks and electronic funds transfer shall comply with applicable guidance in 2 CFR Part 208.

4) The County may submit requests for advance payments and reimbursements monthly when electronic fund transfers are not used, and more often when electronic transfers are used, in accordance with the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

5) When the reimbursement method is used, the County shall make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

6) When the cash method on a working capital advance basis is used, and advance cash payments are made to the County to cover its estimated disbursement needs for an initial period generally geared to the County's disbursing cycle, thereafter the County may receive from the Federal awarding agency or pass-through entity reimbursement for the County's actual cash disbursements.

7) Use of resources before requesting case advance payments – To the extent available, the County shall disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recovered, and interest earned on such funds before requesting additional cash payments.

8) The County shall always, including during the period of performance:

a) Comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award;

b) Not be delinquent in a debt to the United States as defined in OMB Guidance A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," and;

c) Comply with Federal award conditions.

9) In regard to the use of banks and other institutions as depositories of advance payments under Federal awards, the County shall always be able to account for the receipt, obligation, and expenditure of funds, and advance payments of Federal funds shall be deposited and maintained in insured accounts whenever possible.

10) The County shall maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

a) The County receives less than $120,000 in Federal awards per year;

b) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances;

c) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources; or

d) A foreign government of banking system prohibits or precludes interest bearing accounts.

11) Interest earned up to $500 per year may be retained by the County for administrative expense but any additional interest earned on Federal advance payments deposited in interest-bearing accounts shall be remitted annually to the awarding agency through an electronic medium using either ACH network or as otherwise prescribed by awarding agency.

C. PROVISIONS

Pursuant to 2 CFR §200.327, in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and

implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

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

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions

contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

(J) Procurement of Recovered Materials §200.323 - A Non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) Prohibition on certain telecommunications and video surveillance services or equipment §200.216 -

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115–232, section 889 for additional information.

(L) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

23. PURCHASE REBATE/REWARD POLICY

All purchases, whether directly or indirectly billed, that are accompanied with rebates, discounts, coupons or other possible monetary or tangible rewards must be accounted for and such items must be reported to the County Treasurer and County Auditor for recording and disposition, not retained for the purchaser's personal use or gain.

The County Treasurer with assistance from the County Auditor will determine the appropriate method of recording the item(s). Items with monetary value will be recorded as revenue in the fund from which the expenditure was made. Tangible item(s) of a material value will be recorded as revenue in the fund from which the expenditure was made. Coupons, discounts, or other items with possible monetary value will be available for use by the department making the request for purchase. Tangible item(s) will remain with the department requesting the purchase. Direct billing is defined as a purchase from a vendor by the use of a purchase order or check request. Indirect billing is defined as a purchase from a vendor by the use of an individual's personal payment subsequently reimbursed by Orange County.

Rebates in the form of prepaid debit or credit cards will be retained the by the County Auditor and either converted to cash for deposit into the appropriate fund or used to offset future purchases.

24. EMERGENCY MANAGEMENT RELATED EVENT

This procedure is designed to assist with the procurement in the event an Emergency Operations Center (EOC) is activated.

Emergency Management-related events supersede normal purchasing and procurement policies during the time of the disaster. When the EOC is activated, all incident-related expenditures will be facilitated through the EOC or EOC Logistics section.

- A 213 request is submitted to the EOC Incident Commander or EOC Logistics.
- A State of Texas Assistance Request (STAR) form is initiated and routed to the EOC Procurement Unit Leader by Logistics. The STAR number and signed 213 is needed before any purchases can be made.
- The requester must obtain an invoice/receiving slip and submit it to the Procurement Unit Leader.
- Emergency purchasing procedures will be established and records maintained of expenditures for goods and/or services.
- Federal regulations 44 C.F.R. 13.35 prohibit the award of any contract to any suspended or debarred party. Therefore, a SAM check denoting clear status is required for all purchases and all contract activations.

25. HISTORICALLY UNDERUTILIZED BUSINESSES (H.U.B.)

The policy of the Purchasing Department is to ensure a good faith effort is made to assist certified HUB vendors in receiving contracts in accordance with the HUB Program policies and the Minority and Women-Owned Business.

In accordance with Texas Administrative Code 111.13, the Orange County Purchasing Department shall make a good faith effort to contract with Historically Underutilized Businesses (H.U.B) for construction, services, and commodities. The vendor must be on the H.U.B. list.

26. DISADVANTAGED BUSINESS ENTERPRISE

(a) The Disadvantaged Business Enterprise (DBE) program was created to provide a level playing field for small, minority, and woman-owned companies wanting to do business with the Texas Department of Transportation (TxDOT) and other agencies receiving federal funds from the U.S. Department of Transportation (USDOT). As a sub-recipient of federal funds from the Federal Highway Administration through TxDOT for the design and construction of various public works projects.

27. PURCHASING AUTHORITY

A. Appointment of the Purchasing Agent

As outlined in the Texas Local Government Code §262.011(a), the Orange County Purchasing Agent is appointed by and accountable to a Board composed of the Judges of the District Courts and the County Judge. The Purchasing Board appoints the Purchasing Agent for Orange County to a two-year term and approves the budget for the Purchasing Department, including the Purchasing Agent's salary.

B. Purchasing Authority of Commissioners' Court

The authority of Texas counties to purchase one or more items under a contract that will require expenditures exceeding $100,000.00 rests with the Commissioners' Courts. The Commissioners' Courts 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.

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.

Authority:

The Purchasing Agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used by the County or a subdivision, officer, or employee of the County, except purchases and contracts required by law to be made by competitive bid. **A person other than the Purchasing Agent or designated Purchasing Department employee may not make the purchase of the supplies, materials, or equipment or make the contract for repairs.**

The Purchasing Agent shall supervise all purchases made on competitive bids and shall see that all purchased supplies, materials, and equipment are delivered to the proper county officer or department in accordance with the purchase contract.

A purchase made by the Purchasing Agent shall be paid for by an electronic transfer, check, or warrant drawn by the Orange County Auditor on funds in the County treasury in the manner provided by law and the County Treasurer may not honor an electronic transfer, check, or warrant for a purchase **unless the purchase is made by the County Purchasing Agent or on competitive bid as provided by the law, Texas Local Government Code §262.011(f).**

D. Inventory

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 and each subdivision, officer, and employee of the County. The County Auditor shall carefully examine the inventory and make an accounting for all property purchased or previously inventoried and not appearing on the inventory as per Texas Local Government Code 262.011 (I). For more detailed information refer to Orange County Inventory and Fixed Asset Policy.

E. 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 County supplies, materials, and equipment from a subdivision, department, officer, or employee of the County that are not needed or used to another subdivision department, officer, or employee requiring the supplies or materials or the use of the equipment. The Purchasing Agent shall furnish to the Auditor a list of transferred goods. For more detailed information refer to Orange County Inventory and Fixed Asset Policy.

F. Disposition of Surplus or Salvage Property

The Purchasing Agent, acting for Commissioners' Court, shall dispose of surplus, recycle, salvage property, or trade-in for new property following the procedures outlined in Texas Local Government Code §263.152. For more detailed information refer to Orange County Inventory and Fixed Asset Policy.

G. 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.

H. 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 $100,000.00.

28. CODE OF ETHICS

A. Good Faith Effort for County Projects

(a) Contractors who are awarded contracts with the County are required to make a good faith effort to subcontract with HUBs. This includes professional services associated with the County projects.

(b) The prime contractor shall comply with the following criteria:

(1) Divide the contract work into the smallest feasible portions to allow for maximum HUB subcontractor participation, consistent with standard and prudent industry practices.

(2) Notify HUBs, in writing, of work that the prime contractor plans to subcontract, allowing sufficient time for effective participation. The notification shall include:

(A) Adequate information about the project and intended subcontracting work (i.e., plans and specifications, scope of work).

(B) Bonding and insurance requirements of HUB subcontractor

(C) A point of contact within the prime contractor's organization that can answer any questions a HUB may have about the project.

(3) Provide written notice to the Purchasing Agent or HUB Coordinator if the prime contractor is unable to meet the required goal for HUB subcontractor participation, and explain why the goal was not met.

(4) Negotiate in good faith with interested HUBs and not reject bids from HUBs that qualify as lowest, responsive and responsible bidders.

(5) Use the services of minority or women trade organizations or development centers to disseminate the subcontracting opportunities to their membership.

(6) Communicate to the Purchasing Agent when no HUB participation is achieved and include reasons.

(7) Obtain pre-approval from the Purchasing Agent or the HUB Coordinator of all changes involving certified HUB subcontractors. Modifications to the HUB subcontractor participation plan are permitted only after award of the bid and solely with the prior written approval of the Purchasing Office.

(8) The HUB Coordinator provides a list of certified HUBs, upon request, to any prime contractor experiencing difficulty locating certified HUBs to fulfill its subcontracting goals.

B. Code of Ethics Orange County Purchasing Department

The Orange County Purchasing Department adheres to and endorses the policy statements and code of ethics of the National Institute of Governmental Purchasing.

The National Institute of Governmental Purchasing believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization:

- Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.

- Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- Resists encroachment on control of personnel in order to preserve integrity as a professional manager.
- Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.
- Subscribes to and supports the professional aims and objectives of NIGP - The Institute for Public Procurement.

APPENDIX A – (FEMA) MANDATED CONTRACT PROVISIONS

Objective: The objective of the Procurement Policy is to provide Orange County, TX with the requisite parameters for procuring goods and services under applicable state and federal guidelines. The policies and procedures outlined herein are intended to comply with the requirements of Chapter 252 of the Texas Local Government Code, as well as the requirements of OMB Uniform Grant Guidance Super Circular 2 CFR 200 (Oct. 2015), Circular A-102 and A-87, and the Texas Uniform Grant and Contract Management Standards. Specifically, Orange County, TX will comply with OMB Uniform Grant Guidance Super Circular **2 CFR 200.318 – 2 CFR 200.327**, which set standards for procurement of federal and state dollars. More specifically, the underlying purposes and policies of this Procurement Policy are stated below:

THRESHOLD	PROVISION	CITATION
>$250,000 (Simplified Acquisition Threshold)	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. Although not required for contract at or below the SAT, FEMA suggests including a remedies provision. The NFE should consult their servicing legal counsel to determine whether and how remedies for breach of contract are permissible under applicable state, local, or tribal laws or regulations.	2 CFR 200 APPENDIX II (A)
>$10,000	All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. FEMA suggests including a termination for cause and for convenience in all contracts even when not required. The NFE should consult their servicing legal counsel to determine whether and how termination provisions are permissible under applicable state, local, or tribal laws or regulations.	2 CFR 200 APPENDIX II (B)
None	Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." 41 CFR 60-1.4 Equal opportunity clause. b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause: The [recipient] hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any	2 CFR 200 APPENDIX II (C) and 41 CFR §60-1.4(b)

	Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: During the performance of this contract, the contractor agrees as follows: 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. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) 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. (4) 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. (5) 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.	

	(6) 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. (7) 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. (8) 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 [recipient] 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 [recipient] 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 [recipient] 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 [recipient] 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 [recipient] 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 [recipient] under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such [recipient]; and refer the case to the Department of Justice for appropriate legal proceedings.	
>$2,000	Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non- Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. **FEMA PA and HMGP do not require these clauses unless it is a requirement for matching funds by another federal program legislation such as CDBG- DR.** When required, prime construction contracts over $2,000 awarded by NFEs must include a provision for compliance with the Davis-Bacon Act. If applicable per the standard described above, the NFE must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.	2 CFR 200 APPENDIX II (D); 40 U.S.C. §§ 3141-3144 and 3146-3148; supplemented by 29 C.F.R. Part 5; 40 U.S.C. § 3145; supplemented by 29 C.F.R. Part 3

	In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act. Sample contract clauses are provided in the FEMA Contract Provisions Guide.	
> $100,000+ Mechanics or Laborers	Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **Applicability** **This required contract provision applies to all procurements over $100,000 that involve the employment of mechanics, laborers, and 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.** Required Language Compliance with the Contract Work Hours and Safety Standards Act. 1. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (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. 3. *Withholding for unpaid wages and liquidated damages.* The (insert	2 CFR 200 APPENDIX II (E); 40 U.S.C. §§ 3701-3708; supplemented by 29 C.F.R. Part 5

	name of grant recipient or subrecipient) 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. 4. *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. **For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required, FEMA suggests including the language below.** Suggested Language Further Compliance with the Contract Work Hours and Safety Standards Act. 1. The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.	
None	Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.	2 CFR 200 APPENDIX II (F); Funding Agreement; definition found under 37 C.F.R. § 401.2(a).

	This provision does not apply to all FEMA grant and cooperative agreement programs including PA and HMGP as awards under these programs do not meet the definition.	
>$150,000	Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Suggested Language: 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 (insert name of non-federal entity entering into the contract) and understands and agrees that the (insert name of the non-federal entity entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), 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 *et seq.* The contractor agrees to report each violation to the (insert name of the non-federal entity entering into the contract) and understands and agrees that the (insert name of the non-federal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency (FEMA), 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.	2 CFR 200 APPENDIX II (G); 42 U.S.C. §§ 7401-7671q; 33 U.S.C. §§ 1251-1387
>$25,000	Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989	2 CFR 200 APPENDIX II (H); 2 C.F.R. Part 180

	Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified. Suggested Language: Suspension and Debarment This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 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. Part 180, subpart C and 2 C.F.R. Part 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. Part 180, subpart C and 2 C.F.R. Part 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. Part 180, subpart C and 2 C.F.R. Part 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.	(implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989)); 2 C.F.R. Part 3000 (Department of Homeland Security regulations for Non-procurement Debarment and Suspension, implementing 2 C.F.R. Part 180).
> $100,000; and Certification required for all contracts greater than $100,000	Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. **If applicable, contractors must sign and submit the following certification to the NFE with each bid or offer exceeding $100,000.** Required Certification: CERTIFICATION REGARDING LOBBYING (APPENDIX A, 44 C.F.R. PART 18)	2 CFR 200 APPENDIX II (I) and 24 CFR §570.303; (citing 31 U.S.C. § 1352); 44 C.F.R. § 18.110
	See 2 CFR §200.323.	2 CFR 200 APPENDIX II (J)
	See 2 CFR §200.216.	2 CFR 200 APPENDIX II (K)
	See 2 CFR §200.322.	2 CFR 200 APPENDIX II (L)

Work involves the use of materials, and the contract is for more than $10,000	A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. 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 webpage: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg- program. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.	2 CFR 200.323; Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962)
>$100,000	*§135.38 Section 3 clause* *All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):* A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations. C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement	

	or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135. E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135. F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).	
None; All FEMA declarations and awards issued on or after November 12, 2020.	Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY2019 NDAA) and 2 C.F.R. § 200.216, as implemented by FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), prohibit the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to: Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:	2 CFR 200.216

	(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115-232, section 889 for additional information. (d) See also § 200.471.	
None	The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.	2 CFR 200.112
None	The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If	2 CFR 200.336

	paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.	
None; All FEMA declarations and awards issued on or after November 12, 2020.	Suggested Language: If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) listed below to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Contracting with HUB, small and minority businesses, women's business enterprises, and labor surplus area firms. (a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran- owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below. (b) Such consideration means: (1) These business types are included on solicitation lists; (2) These business types are solicited whenever they are deemed eligible as potential sources; (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types; (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types; (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring a contractor under a Federal award to apply this section to subcontracts.	2 C.F.R. § 200.321(b)(1)-(5)
None	Financial records, supporting documents, statistical records, and all other non- Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass- through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following: (a) If any litigation, claim, or audit is started before the expiration of the 3- year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. (c)Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.	2 CFR 200.334; and 200.337

	(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity. (e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned. (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates). (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass- through entity) to form the basis for negotiation of the rate, then the 3- year retention period for its supporting records starts from the date of such submission. (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation. Suggested Language for All Procurements: a. The Contractor agrees to provide (insert non-federal entity), the Texas Division of Emergency Management (TDEM), 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. b. The FIRM agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. c. 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. d. In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the (insert 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.	
None	CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED. A governmental Corporation may not enter into a governmental contract with a company that	United States Code 19 U.S.C. 2511

	is identified on a list prepared and maintained by the U.S. Department of Treasury under Executive Order 13224.The term "foreign terrorist organization" in this paragraph has the meaning assigned to such a term in Section 8 U.S.C.1189(a)(1) of the United States Code.	
>$100,000	PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full- time employees; and (2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental Corporation may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and will not boycott Israel during the term of the contract.	(Adhere to your State's Local Government Code)
Option Contract Language for contracts awarded prior to Grant Award	The contract award is contingent upon the receipt of federal funds. If no such funds are awarded, the contract shall terminate.	Optional
	Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. Suggested Language: The CONTRACTOR shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).	42 U.S.C. 6201
	The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.	Section 504 of the Rehabilitation Act of 1973, as amended.
	Pursuant to the *Violence Against Women Act Reauthorization of 2022*, the Grant Recipient must certify that local policies do not interfere with the residents' Right to Report Crime and Emergencies from One's Home. The certification will confirm that no ordinances, local regulations, or policies adopted by the local government and currently in effect contain any financial or regulatory penalty imposed on property owners or residents as a result of any use of emergency services, or that the Grant Recipient is actively addressing such local regulations.	Pub. L. 117-103, 136 Stat. 49

Non-Binding Nature of this Publication

This publication is designed solely to provide general summary information to those wishing to do procurement business with Orange County. As such, it is not binding in either a legal or regulatory sense. The procurement activity of Orange County is performed in accordance with the applicable laws, the Texas Local Government Code 262, and other applicable rules and regulations governing the information in this publication notwithstanding.
This publication does not have the force or effect of any law, rule or regulation, and should not be relied upon by bidders in determining their actions or conduct.

Signature:_____

Printed Name: _____

Title: County Judge

Effective Date: _____

Approved in Commissioners' Court