

*City of Blanco*  
Purchasing Policy  
September 2023

## Table of Contents

Section 1: Introduction .....	3
1.1 Purpose .....	3
1.2 Manual .....	3
1.3 Policy Maintenance.....	4
1.4 Revision History.....	5
1.5 Competitive Bidding Requirements .....	5
Section 2: Methods & Thresholds for Good and Services .....	5
2.1 Micro Purchases (Under \$3,000) .....	6
2.2 Small Purchases (between \$3,000-\$5,000).....	7
2.3 Large Purchases (over \$50,000).....	7
2.4 Closing Out the Purchase .....	9
Section 3: Historically Underutilized Businesses .....	9
Section 4: Rental and Lease Equipment.....	9
Section 5: Professional Services.....	10
Section 6: Annual Contracts (With Unit Prices) .....	11
Appendix A – HUB Form.....	12
Appendix B – Federally Funded Procurements.....	13

## Section 1: Introduction

### 1.1 Purpose

This Policy is designed to provide City departments with critical information and to assist them through all phases of the procurement process, including planning, sourcing, contracting, contract administration and surplus disposition. The City adheres to the public procurement values of accountability, ethics, impartiality, professionalism, service, and transparency by:

- Ensuring compliance with local, state, and federal laws applicable to procurement and contracting.
- Obtaining needed goods, services, professional services, and public works at the best possible price, of the highest quality and at the right time.
- Serving as stewards of the public trust by spending tax dollars wisely, efficiently and with integrity.
- Providing all suppliers, including Historically Under-utilized Businesses, equal access to the City's competitive processes for the acquisition of goods, services, professional services, and public works.
- Protecting the interests of City taxpayers by avoiding any undue influence, political pressures and protecting the integrity of the procurement process. To accomplish the above, officials, directors and employees of the City will strive to provide equitable and competitive access to the City's procurement process for all responsible suppliers. Further, procurement will be conducted in a manner that promotes and fosters public confidence in the integrity of the City's procurement process. The City is a General Law Type A city.

### Disclosure of Certain Relationships by Government Officials and Vendors

A local government official must disclose certain relationships with vendors to the City. The official must file a disclosure statement if the vendor who is contracting or has contracted with the City has:

1. a familial relationship with the official,
2. an employment of other business relationship with the official or a family member of the official that results in receiving over \$2,500 of taxable income over a 12-month period, or
3. given the official or family member of the official one or more gifts that have an aggregate value over \$100 in the 12-month period preceding the date the official becomes aware of the contract or potential contract with the City.

Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ found on the Texas Ethics Commission's website ([ethics.state.tx.us/forms/conflict](http://ethics.state.tx.us/forms/conflict)), the vendor or person's affiliation or business relationship that may cause a conflict of interest with the City.

By law, this questionnaire must be filed with, not later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed.

A person commits a class C misdemeanor offense if the person violates Section 176.006, Texas Local Government Code. By submitting a response to a quote, bid or other request, vendors declare compliance with the requirements of Chapter 176 of the Texas Local Government Code.

### 1.2 Manual

This Purchasing Manual (Manual) is the official purchasing policy document for the City. This Manual is intended for use as a guide to the City's purchasing needs. City employees involved in the purchasing

process should be familiar with, and adhere to, the guidelines set forth in this manual as they work to achieve the purpose and objectives set by the City.

The Manual includes all current purchasing policies that have been developed by the City through the time of issuance, unless otherwise noted. The policies herein apply to all employees and other individuals involved in all City purchasing processes.

Wherever possible, written procedures will also be established and maintained by the Finance Director for functions involving purchasing throughout the City. The Manual is subject to revision to meet the often rapidly changing developments encountered in the field of purchasing and in the economy.

### 1.3 Policy Maintenance

The Manual is available to the City Council and staff of Blanco. It is the responsibility of the Finance Director to implement and enforce compliance with the Manual. It is the responsibility of all employees associated with the City to be aware of and abide by these policies and to exercise sound business judgment in the application of these policies.

It is the responsibility of the Finance Director to establish and review the initial version of the Manual, as well as create and review subsequent changes. It is the responsibility of the City Council to approve and adopt this Manual and subsequent major revisions.

Annually, as a part of the budget adoption process, the policies in the Manual will be reviewed and updated as needed, to align the policies with current and desired practices. The appendices contain material that may change more often and should be updated on an as-needed basis.

All change requests related to the Manual must be submitted in writing to the Finance Director. The Finance Director is responsible for reviewing and incorporating all change requests, as well as making changes to the official Manual and posting changes in a timely manner. All revisions to policy language must be approved by the City Council.

#### 1.4 Revision History

Date	Version #	Changes Made	Author
9/2022	01	Initial document	

#### 1.5 Competitive Bidding Requirements

The Texas Local Government Code requires competitive bidding on proposals for all City purchases exceeding \$50,000 in amount, and prohibits a City employee from making 'separate, sequential, or component purchases to avoid the competitive bidding requirements.' A violation is a Class B misdemeanor.

The Texas Local Government Code does not require competitive bidding for purchases exceeding \$50,000 if the purchase is made through a State of Texas approved contract or cooperative; or in certain other limited circumstances defined in such Code.

These requirements strongly encourage anticipating City needs for an entire budget year for supplies, equipment, and services. If the City anticipates purchasing several like items the total cost of which would be over \$50,000 in a budget year, the City must combine the purchases and use competitive bidding in order to comply with state law.

## Section 2: Methods & Thresholds for Good and Services

The following sections outline the methods of source selection available to procure goods and services for the City. They also establish when each method may be used, the key requirements of each method, the manner of award and the authority to award. Purchase requirements shall not be divided to constitute a Micro Purchase or under \$50,000 purchase under this Section.

#### General Purchasing Guidelines

- Before starting the Request for Quotation process, active contracts should be reviewed to verify desired products or services are not available to purchase on contract.
- The using department is strongly encouraged to consult with the Finance Department for guidance if the purchase is a sole source or an emergency.

Dollar Amount	Purchase Method	Required Documents	Approval Requirements
Under \$3,000	Request for Quotation process (RFQ) or  City-Issued Credit Card	Itemized and signed receipt or invoice.	Must be approved by the department head.  For purchases over \$1,000, notify the Finance Department prior to purchase.
Between \$3,000 and \$50,000	Request for Quotation (RFQ) process	Acquire at least 3 quotes. Need to maintain quote documentation and written decision-making rationale.  <i>If you cannot obtain 3 quotes, consult with Finance.</i>	Must be approved by the City Administrator and reviewed by the Finance Department prior to reaching out for quotes.  Best value quote should be selected.  Purchases over \$3,000: department heads must check to see if there are any HUBs providing solicited items/services and reach out to them.
Over \$50,000	<u>Competitive proposal</u> • Sealed Bid  • Request for Qualification  • Request for Proposal  <u>Noncompetitive proposal</u> • Sole source procurement  • Emergency purchase	Documents required depend on the source method. Please see the purchasing policy or consult with Finance to verify what documents need to be maintained.	Prior to going out for a bid, the bidding method must be discussed with and approved by the City Administrator.  Prior to purchase, the City Council's approval is required.

2.1 Micro Purchases (Under \$3,000)

The purchase of goods and services under \$3,000 is an informal purchase and may be solicited through a Request for Quotation process or by using a City-Issued Credit Card. For purchases over \$1,000, the department head shall notify the Finance Department prior to purchase.

The department head may exercise discretion for the acquisition of such purchases as authorized in the current fiscal budget. Purchases in this category may be made by department heads or City employees designated by department heads. It is the responsibility of each department head to ensure complete

control over this purchasing process. Department heads should designate employees who are allowed to make purchases and provide internal control procedures to ensure that all purchases are for legitimate public purposes.

Itemized invoices and receipts should be directed to the Finance Department. The invoices or receipts should be in the original document and must be signed and given an account code by the department head. Department heads shall visit the Finance Department weekly for invoice review and coding.

Statements from vendors should be reconciled monthly by the Finance Department so that all purchases are accounted for.

## 2.2 Small Purchases (between \$3,000-\$5,000)

Purchases for goods and services between \$3,000 and \$50,000 are informal purchases and may be solicited through a Request for Quotation process. A minimum of three quotations are required for purchases of goods or services within this threshold. If the department head cannot obtain at least three quotes, they should consult with the Finance Department for further assistance.

The using department may issue a Request for Quotations to vendors with the approval of the City Administrator and a review from the Finance Director.

It is the responsibility of the department head to obtain the quotes and determine the best value for the goods and services requested. Once a decision has been made, the quote documentation and decision shall be submitted to the City Administrator or designee for final approval. An explanation will be required if the quote for the lowest cost was not chosen.

For purchases over \$3,000, the following requirements will apply:

- Opportunity to quote should be extended to at least two HUBs inside or outside of Blanco County. The state maintains a database of HUBs at <https://mycpa.cpa.state.tx.us/tpasscmlsearch/tpasscmlsearch.do>.
- If no HUBs are registered in Blanco County for the good/service needed, the purchase is exempt from this requirement, but the practice is still encouraged.
- A non-response quotation is considered a quotation for this purpose provided the HUB was given a reasonable time (3-5 business days) to respond.
- Quotations received from vendors shall not be divulged to other bidders until after the award has been made.

## 2.3 Large Purchases (over \$50,000)

The purchase of goods and services over \$50,000 is a formal purchase and requires approval from the City Council prior to purchase. The purchase of goods and services over \$50,000 shall be made through one of the following sourcing methods:

- Competitive proposal
  - Sealed Bid
  - Request for Qualification
  - Request for Proposal
- Noncompetitive proposal
  - Sole source
  - Emergency purchase

**Note: Sourcing method must be discussed with and approved by the City Administrator.**

### Competitive Proposal

If a purchase is anticipated to exceed \$50,000 regardless of the method of purchase the sealed bid or proposal procedures must be used. Bid specifications or a request for proposal shall be prepared and mailed to vendors. The bid is advertised in the local newspaper. The user department shall be responsible for establishing and providing a complete written set of specifications along with a requisition. Specifications shall be written on a technical or functional basis. Brand names are to be avoided to ensure a fair competitive environment.

Sealed bids or proposals are received and tabulated by the user department. If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the City. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud.

The lowest and best responsible bid or proposal will be recommended to the Council for their approval. In determining the best value for the City, the City may consider:

- The purchase price;
- The reputation of the bidder and of the bidder's goods or services;
- The quality of the bidder's goods or services;
- The extent to which the goods or services meet the City's needs;
- The bidder's past relationship with the City;
- The impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- The total long-term cost to the City to acquire the bidder's goods or services; and
- Any relevant criteria are specifically listed in the request for bids or proposals.

The Council will evaluate the recommended vendor and decide to approve or disapprove. If the recommended vendor is not approved the Council may award the bid to another vendor; bids may be rejected altogether. If the recommendation is approved and the Council awards the bid, the Purchaser may submit an award letter to the vendor or may prepare a purchase voucher. If an award letter is sent to the vendor, a copy of the letter should be sent to the Finance Department along with a copy of the approved bid or proposal.

### Sole Source Procurement

Sole source procurement is defined as the acquisition of a good, service, professional service, or public work in which there is only one possible vendor. The department requesting a sole source procurement shall provide and retain a written justification to support a sole source determination. The sole source written justification, signed by the department head and the City Administrator, should explain and fully describe the conditions which make the supplier the only source for a given commodity or service. Sole source procurement shall be avoided, except when no available alternative sources exist. The sole source written justification shall be maintained as a public record.

### Emergency or Public Health and Safety Purchases

Emergency purchases are defined as those purchases caused by an unforeseen and dangerous or public health and safety situation requiring immediate action to preserve the health or safety of people or

property. When such purchases are made, the user department will make the purchase at the best possible price. The use of such purchase authority by reason of failure to anticipate normal needs should be avoided.

#### 2.4 Closing Out the Purchase

1. After the purchase is placed, the vendor provides ordered goods or services and submits an invoice to the City.
2. The user department will inspect the goods upon delivery, or the services upon completion, to see if specifications have been met.
3. The user department will sign and code the invoice or receipt prior to submitting it to Finance.
4. The vendor invoice will be submitted to the Finance Department for payment before noon on Monday.

### Section 3: Historically Underutilized Businesses

Pursuant to §252.0215, Local Government Code, the City, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two historically underutilized businesses in the county in which the City is situated on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. For state or federally funded purchases such as some grants, outreach to historically underutilized businesses may be required above the \$50,000 threshold.

The City should actively contact at least 2 HUBs for any expenditure more than \$3,000. However, if the online database fails to identify a historically underutilized business in the county in which the City is situated, the City is exempt from this section.

The Texas Comptroller's website has an online database to search for HUBs in Hays County. This database can be accessed at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/>. Historically Underutilized Business Outreach Certification Form must be filled out for each qualifying purchase (see [Appendix A](#)). This form will serve as documentation of the City's compliance with state HUB laws.

### Section 4: Rental and Lease Equipment

Sealed bids or State of Texas contracts will accomplish all lease agreements if the amount of the lease is expected to be \$50,000 or more over the term of the lease agreement. Leases should never be used to avoid or circumvent the requirements for competition that would apply to outright purchases. The soundest rule is that any lease of equipment be subject to the requirements for competition that apply to outright purchases.

The City Secretary should be notified of the date the equipment is rented/leased and the date the equipment is returned so that an insurance certificate can be obtained and cancelled.

When renting/leasing is the only viable answer to an equipment need, care should be exercised to provide cancellation options that are favorable to the City. The department should identify the source of funding to cover the payments of equipment rental/lease for the entire period of the contract.

## Section 5: Professional Services

"Professional Services" include services which involve mental or intellectual skills, often accompanied by formal certification or licensing by a state agency, such as accounting, architecture, engineering, medicine, planning, economics, law, financial advisory services and scientific or laboratory consulting services.

State laws exempt the procurement of these services from competitive bidding requirements. The City Council should select professional service consultants based on demonstrated competence and qualifications and should negotiate fees based on what is fair and reasonable for the type of services, rather than on a "low bid" basis. Except for architects, engineers, and land surveyors, both price and qualifications can be considered in selecting consultants.

In the case where Federal funding will be used for professional non-engineering, architectural, or land surveying services, a cost comparison competitive proposal taking cost and qualifications into account will be followed. Where a project is being funded by a federal grant, the City's procurement process will also comply with the federal laws applicable to the City and the respective grant.

In the case of architectural, engineering services or land surveying services a two-step process can be followed, according to §2254, Texas Government Code, the Professional Services Procurement Act. The steps include:

1. The initial selection of the most highly qualified provider of those services on the basis of demonstrated competence and qualifications (and not considering price); and
2. The negotiation of a fee with the selected consultant. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the second most qualified consultant may be undertaken, and so forth until a contract is entered into.

Note: For engineers, architects, and surveyors, price may not be considered in the initial selection of the consultant. For professional services procurement involving an anticipated fee of \$25,000 or less, the process described may be followed in an informal manner by the elected official/department head but must be approved by the City Council. For procurements involving an anticipated fee exceeding \$25,000, the department head in coordination with the City Administrator may make a formal request for proposal procedures.

All contracts for equipment maintenance, equipment lease/rental and professional services should be approved by the City Attorney and brought before the City Council for approval and signed by the City Administrator.

When a user department wishes to initiate an RFP or RFQ to procure professional services, it should have the approval of the City Council. The user department will evaluate proposals, or a committee appointed by the City Council. A contract should be approved by the City Attorney based on the RFP or RFQ and the consultant's proposal prior to being presented to City Council for approval.

## Section 6: Annual Contracts (With Unit Prices)

Departments will request authorization from the City Council to request bids for goods and/or services such as petroleum products, road materials, work uniforms etc. These contracts include a unit price and not a total price. The following statement should be included in the terms and conditions of each request for bids that require an annual contract:

- If this bid is accepted and approved by City Council, then this bid becomes the contract and there are no oral agreements either expressed or implied.

### References

- Texas Local Government Code
  - 252.021 - over \$50,000 threshold for competitive bids
  - 252.0215 - expenditures \$3,000-\$50,000 require municipality to actively contact at least 2 HUBs
  - 252.022 - emergency purchases can be made in situations of public calamity when there is an immediate need to relieve necessity of the municipality's residents or to preserve the property of the municipality; to preserve or protect the public health or safety of the municipality's residents; and to pay for unforeseen damage to public machinery, equipment, or other property.
  - 252.043 - Award of contract
  - 252.0436 – Contract with person indebted
  - 252.044 – Bonds for full contract price are required
  - Notice requirement: once a week for 2 consecutive weeks and 14 total days
- Texas Government Code
  - 2254.004 - requires contracts to select by qualifications then, negotiate price but do not choose solely based on price
- 2 CFR 200
  - <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d>

Appendix A – HUB Form

Historically Underutilized Business (HUB)

Outreach Certification Form

*(for purchases above \$3,000)*

<b>REQUESTING DEPT:</b>
Department Name
Contact Staff Name

REQUIRED HUB CONTACT #1			
Vendor Name		Contact Person (Phone or Email)	
Contact Date		Price Quoted	\$
Description of Goods/Services		Relevant Documentation	

REQUIRED HUB CONTACT #2			
Vendor Name		Contact Person (Phone or Email)	
Contact Date		Price Quoted	\$
Description of Goods/Services		Relevant Documentation	

**IMPORTANT:**

All purchasing policies must be followed when contacting HUBs for quotations.

If you cannot obtain 3 quotes, please consult with the Finance Department.

## Appendix B – Federally Funded Procurements

(Current as of May 2023)

Procurements and contracts utilizing federal funds require additional elements to be in compliance with federal laws and regulations. Below are detailed the federal procurement standards and the contract provisions in their entirety. Not all standards and contract provisions will be applicable in every situation, but they should be reviewed for any situation where federal funds are involved. The primary requirement is that jurisdictions must follow their own procurement policies and procedures, so in cases where thresholds in the federal rules are higher than state or city thresholds, the lowest thresholds should be used.

The following sections are from the Code of Federal Regulations, Title 2, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

### [§ 200.318 General procurement standards.](#)

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317 through 200.327](#).

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

(c)

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

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

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

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

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

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

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](#).

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

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

(i) The actual cost of materials; and

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

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

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and

claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

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

**§ 200.319 Competition.**

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

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

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

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

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

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

define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

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

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

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

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

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

(a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in [§ 200.1](#), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

#### **(1) *Micro-purchases* —**

(i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](#)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\) and \(v\)](#) of this section.

(iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must

maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](#) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) **Small purchases** —

(i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](#) or [paragraph \(c\)](#) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

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

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

(c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

#### **§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

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

(b) Affirmative steps must include:

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

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

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron,

aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

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

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

#### **§ 200.323 Procurement of recovered materials.**

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

#### **§ 200.324 Contract cost and price.**

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

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

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

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**§ 200.325 Federal awarding agency or pass-through entity review.**

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

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

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

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

- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### § 200.326 Bonding requirements.

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

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

### § 200.327 Contract provisions.

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

#### **Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

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

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60–1.3](#) must include the equal opportunity clause provided under [41 CFR 60–1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964–1965 Comp.](#), p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

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

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

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

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

be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

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

