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PURCHASING POLICY

**CITY OF SEGUIN
205 N. RIVER
SEGUIN, TEXAS 78155**

June 6, 2024

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I. INTRODUCTION

Purchasing is the process of acquiring goods and services necessary for a government entity to provide the public with certain services. The City of Seguin has authorized the Purchasing Department to act as the centralized office for the acquisition of goods and services, as well as the management and disposal of City equipment, materials, and supplies.

It is the policy of the City of Seguin that all purchasing shall be conducted strictly on the basis of economic and business merit to best promote the interest of the citizens of Seguin. The City encourages free and unrestricted competition on all bid requests and purchases, ensuring the taxpayers the best possible return on each dollar. All contracts and purchases shall be handled so as to obtain the best value for the City, with bids, proposals or quotations solicited whenever practical in accordance with all applicable Federal, State and Municipal requirements.

This Purchasing Policy applies to all acquisitions funded by the City of Seguin, bond funds, and any other funds unless specifically exempted by applicable law. The exceptions are limited to certain professional services, real property transactions, and leases which because of their nature are not conducive to normal procurement routines. These acquisitions shall be made under the direction of the City Manager or his/her designee.

Any employee failing to comply with Purchasing Policies may be required to pay for the items or services out-of-pocket, and/or be subject to disciplinary action, including termination and appropriate legal prosecution.

II. PURCHASING CODE OF ETHICS

Public employment is a public trust. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City of Seguin's procurement processes. It is essential, therefore, that compliance with the City of Seguin Purchasing Policy be supported by all employees of the City and that those doing business with the City of Seguin also observe the ethical standards prescribed herein.

General Ethical Standards –

1. **Personal Gain.** It is a breach of ethics to attempt to realize personal gain through public employment by any conduct inconsistent with the proper discharge of the employee's duties.
2. **Influence.** It is a breach of ethics to attempt to influence any public employee to breach the standards of ethical conduct.
3. **Conflicts of Interest.** It is a breach of ethics for any employee of the City of Seguin to participate directly or indirectly in procurement when the employee knows that:
 - a. The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
 - b. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - c. Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Affiliates (e.g., business concerns, organizations or individuals) and employees of the City of Seguin are prohibited from submitting offers for or participating in any contract for City of Seguin purchases from which they would financially benefit, directly or indirectly. No affiliate or employee of the City of Seguin shall seek to influence in any manner the award of a contract, purchase of a product or service from any vendor. Affiliates and employees must immediately disclose to the City of Seguin any silent partnership, proprietorship, employment, other involvement or relationship in a prospective contract or procurement.

- 4. Gratuities.** It is a breach of ethics to offer, give or agree to give any employee or former employee of the City of Seguin, or for any employee or former employee of the City of Seguin to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision regarding a procurement or influencing the content of any specification or procurement standard.

Acceptance of gifts by employees from sources or potential sources at any time is strictly prohibited, except for inexpensive advertising items of nominal value. Employees must not accept any gifts that create an obligation to any source and shall not conclude any transaction from which they benefit, directly or indirectly. Employees of the City of Seguin are not to participate in any type of extravagant entertainment with a supplier, customer, consultant, or contractor. These restrictions do not include entertainment such as business meals, which are customary and proper under the circumstances, as long as they are consistent with good business ethics and do not place the recipient under an obligation of any kind.

Vendors must be advised from time to time that employees may not solicit or accept gratuities such as any type of compensation, contribution, emolument, offer of employment, loan, reward, rebate, gift, money, lodging, service, or “other thing of value”, except as specifically outlined in this section.

If a trip to a source’s plant or distribution center becomes necessary for technical or other reasons, the trip must be made at the City of Seguin’s expense, unless provided for contractually by the vendor and/or approved by the City Manager.

Noncompliance with this policy from a vendor, consultant, or contractor may be justification for termination of the business relationship.

- 5. Kickbacks.** It is a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a sub-contractor under a contract to prime contractor or higher tier sub-contractor for any contract for the City of Seguin, or any person associated therewith, as an inducement for the award of a subcontract or order.
- 6. Confidential Information.** It is a breach of ethics for any employee or former employee of the City of Seguin knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

III. PURCHASING DEPARTMENT GOALS

- 1.** To purchase quality goods and services at the best possible price in accordance with all applicable laws;

2. To arrange delivery of goods and services when and where needed and to assure a continuing supply of needed goods and services;
3. To guard against misappropriation of any assets procured;
4. To ensure that public funds are safeguarded by making every effort to obtain the best value for public dollars expended;
5. To assure that public spending is not used to enrich elected officials or government employees or to provide favors to preferred constituents; and
6. To assure that all responsible bidders including Historically Underutilized Businesses (HUBs) are allowed a fair opportunity to compete for the City's business and have an equal opportunity in the contract awards process.

IV. PURCHASING DEPARTMENT RESPONSIBILITIES

The Purchasing Department is charged with oversight of the solicitation and acquisition process including, but not limited to advertising, vendor selection, specification development, issuance and receipt of offers, execution of contracts, disposal of surplus, and negotiating with sources on matters relating to the purchase.

The Purchasing Department has the duty and full authority to question the use, quality, quantity and kind of item requisitioned and will participate with user departments in establishing clear, concise, nonrestrictive specifications and instructions to be utilized in procurement.

V. PURCHASING AUTHORIZATION LEVELS

Purchase Amount:	Authorized By:
\$0 to \$2,999.99	Requisitioner and Supervisor
\$3,000 to \$9,999.99	Requisitioner, Supervisor and Director
\$10,000 to \$49,999.99	Above plus City Manager
\$50,000 or more	Above plus City Manager following City Council approval

Purchase orders cannot be processed without appropriate approvals for requisitions that contain accurate descriptions of goods or services to be purchased.

All expenditures are subject to City Council budgetary approval. Unbudgeted purchases must be approved in advance by the City Council. Requisitions pre-encumber budgeted funds.

VI. TYPES OF PURCHASES

Purchasing staff is available for assistance with any aspect of the quoting/bidding process regardless of the dollar amount of the purchase.

1. Purchases Under \$3,000

Bids or Quotes are encouraged, but not required, for purchases under \$3,000. Every City employee should safeguard City funds to ensure that taxpayers receive the best possible return on each dollar.

With the authorization of the appropriate Supervisor, authorized personnel may make purchases under \$3,000 by three different methods:

- a) by use of a procurement card in compliance with the City's procurement card policy; or
- b) by entering a requisition into the City's purchasing system enabling the Purchasing Department to issue a Purchase Order; or
- c) by making a purchase **up to \$499.99** from a merchant with whom the City has an account. (Purchases of \$500 or more **must** be purchased by procurement card or Purchase Order.)

2. Purchases \$3,000 up to \$50,000

Purchases for goods or services in an amount of \$3,000 or more, but less than \$50,000, require the solicitation of informal written quotes or bids from at least three (3) potential vendors. In compliance with the Texas Government Code, at least two (2) quotes must be requested from Historically Underutilized Businesses (HUBs) in Guadalupe County, if available. If HUBs cannot be identified within the county, the city is exempt from this requirement. A current list of HUBs can be obtained from the City's Purchasing Department or the State website: <http://www.window.state.tx.us/procurement/prog/cmb/>

Departments may obtain quotes/bids for products and services they wish to obtain under \$50,000. The Department must assure that all vendors contacted are provided the same specifications and information so that all vendors have an equal opportunity to provide an accurate quote. Quotes obtained by a Department will need to be submitted to Purchasing along with a complete and approved requisition in order that a Purchase Order may be issued.

If a Department desires assistance in obtaining quotes/bids, a requisition should be entered with a realistic estimated cost or the budgeted amount and a full description of the desired product or service. Purchasing staff will require the Department's input and cooperation in order to specify, source, and ultimately obtain the appropriate and correct product or service for the Department in a timely fashion.

3. Purchases \$50,000 or more

Purchases for goods or services in an amount of \$50,000 or more require a formal sealed bid solicitation process. The Purchasing Department will coordinate the preparation of specifications, advertising, solicitation and receipt of bids in compliance with State of Texas statutes.

Component orders or contracts, each less than \$50,000, but which in the aggregate exceed that amount, and which reasonably should be included in one order or contract shall not be used to avoid the formal bidding process.

Departments should initiate a purchase by entering a requisition with a realistic estimated cost or the budgeted amount with a full description of the desired product or service. Purchasing staff will require the Department's input and cooperation in order to specify, source, and ultimately obtain the appropriate and correct product or service for the Department.

Formal bidding processes take a MINIMUM of six (6) weeks and sometimes much longer from specification development through Council approval. Departments should plan accordingly. Additional time should be allowed for manufacturer's lead time.

If the required equipment or service is available on a cooperative purchasing contract, a user department may obtain their own quotes for purchases over \$50,000 from the contracted vendor(s). Such quotes are subject to Purchasing staff review prior to seeking Council approval of a purchase of this nature.

4. Credit Card / Procurement Card Purchases

The City's Procurement Card (P-Card) program is a tool used to expedite the purchase process for many of the daily requirements of conducting City business. It enables purchases for non-restricted commodities by telephone, internet, or in person directly from vendors. Credit Card purchases should be made in compliance with the City Procurement Card Purchasing Policy, located in Appendix B.

Special attention should be made to the fact that credit card limits for certain employees may exceed the \$3,000 bidding requirements established by State law and the City's Purchasing Policy. Caution is advised as credit card purchases should not be used to circumvent bidding requirements.

5. Professional Services

Personal and professional services are exempted from the competitive bidding process and are procured through the use of Request for Qualifications (RFQ) documents. A government entity may not select providers of professional services based on competitive bids, but rather, must make the selection and award based on demonstrated competence and qualifications for performing the services. Professional services are defined as those in the field of Accounting, Architecture, Landscape Architecture, Land Surveying, Medicine, Optometry, Engineering, Real Estate Appraisal, and Nursing. Other personal and professional services may be exempt as well. The Purchasing Department will coordinate the RFQ process for obtaining personal and professional services. Personal and professional services are obtained under the direction of the City Manager or his/her designee.

6. Emergency Purchases

Valid emergencies are those that occur as a result of:

- a. A public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality; or
- b. The unforeseen damage to or breakdown of equipment which must be kept in operation to maintain the public's safety or health, or whose breakdown would result in the disruption of City operations; or
- c. Any procurement necessary to preserve or protect the public health or safety of the municipality's residents.

Emergency purchases in any amount are exempt from competitive bidding. The Purchasing Manager, or his/her designee, must be notified of the emergency situation and the procurement process being used to address the issue.

Emergency purchases costing \$50,000 or more require City Manager approval. If time permits, the City Manager will seek and obtain approval of the City Council for procurements in excess of budgeted amounts.

7. Sole Source Purchases

Sole source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies. Other items treated as sole source goods are films, manuscripts, or books and library materials with exclusive distribution rights as well as captive replacement parts or components for equipment.

When a department has identified a specific item with unique features or characteristics essential and necessary to the requesting department and no alternate products are available, a detailed written justification must be provided to the Purchasing Department in advance of the purchase for review and approval.

8. Cooperative Purchasing

Cooperative purchasing occurs when two or more governmental entities coordinate some or all purchasing efforts to reduce administrative costs, take advantage of quantity discounts, share specifications, and create a heightened awareness of legal requirements. Cooperative purchasing can occur through inter-local agreements, state contracts, piggy-backing, and/or joint purchases.

The City of Seguin may enter into cooperative buying agreements with other local government agencies in accordance with the State of Texas Inter-local Cooperation Act of 1971, as approved by the City Manager of the City of Seguin.

The City's Purchasing Department will take advantage of available cooperative purchasing opportunities in the procurement of goods and services required by the City when doing so is deemed most advantageous to the City.

9. Automated Information Systems

All requests for computer equipment, software, telecommunications and related services or accessories should be submitted to the Information Technology (IT) Department for review and technical evaluation. IT will review each request for compatibility with other hardware and software and will investigate alternatives.

Recommendations will be based on, but not limited to, additional costs incurred because of the purchase; compatibility considerations; cost effectiveness of the request; and alternatives that would effectively meet the users' needs.

Use of the procurement card to circumvent this review is strictly prohibited.

10. Vehicle Related Purchases

The term "vehicle" will encompass all rolling stock acquired by the City. This will include all on and off-road equipment such as passenger vehicles, motorcycles, truck stock, road construction equipment of all sorts, forklifts, tractors, trailers, riding mowers, etc.

Specifications for the purchase of new vehicles shall be developed with the combined input of the requisitioning Department, the Fleet Supervisor, and the Purchasing Manager or his/her designee.

Acceptance and delivery of new vehicles will take place under the direction of the Fleet Supervisor who will have responsibility to ensure the vehicles are properly prepared both mechanically and with proper documentation and licensing through the appropriate channels.

11. Verbal Orders

Verbal Orders are not allowed prior to the issuance of a purchase order or without the use of a procurement card.

12. Purchase Order Exemptions

Certain recurring monthly expenses, as outlined in Appendix A do not require a purchase order. Invoices for these expenses should be submitted directly to the Finance Department, with appropriate account coding and signature of supervisor or Director.

13. Check Requests

Request for payment of certain expenditures that do not require a purchase order and do not have an original invoice must be made on a Check Request Form submitted directly to the Finance Department. The documentation must accompany the Check Request Form. An example of the Check Request Form is in Appendix A.

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

1. For purchases of any real property, tangible goods, or non-professional services less than \$500,000, or construction services less than \$100,000, City staff may approve, within established City purchasing guidelines and limitations, 1) the lowest qualified quote or 2) a quote received from a business located within the City limits if the quote is within 5% of the lowest qualified quote received from a business located outside the City limits, provided that said quote meets all qualifications and specifications and provides the best combination of price and additional economic development opportunities for the City.

2. For purchases of any real property or tangible goods in the amount of \$500,000 or more, City staff may approve, within established City purchasing guidelines and limitations, 1) the lowest qualified quote or 2) a quote received from a business located within the City limits if the quote is within 3% of the lowest qualified quote received from a business located outside the City limits, provided that said quote meets all qualifications and specifications and provides the best combination of price and additional economic development opportunities for the City.
3. The following purchases are excluded from the City's local vendor preference policy:
 - a. Professional services governed by the Professional Services procurement Act
 - b. Non-professional service contracts over \$500,000
 - c. Construction services over \$100,000
 - d. Purchases involving, in whole or in part, federal or state funding
 - e. Purchases of telecommunication and information services

VIII. INSURANCE REQUIREMENTS

The City may require certain insurance coverage to be provided by contractors, vendors and consultants. In general, if a service is being provided on City property, proof of insurance is required. Specific insurance requirements are incorporated into bid documents and specifications for each bid or proposal. Insurance requirements are reviewed periodically to determine the appropriateness of coverage and values. When required, the insurance requirements set forth in Appendix C are considered minimal. When user departments obtain their own quotes for work to be conducted on City property, the City's insurance requirements should be conveyed to the potential vendor(s). A correct insurance certificate will be required from the vendor prior to a Purchase Order being issued. A procurement card may not be used to circumvent this requirement.

IX. PURCHASING DOCUMENTS

1. Requisition

A Requisition is a formal request for a purchase to be made. The Requisition originates in the user department. It is used to inform the Purchasing Department of a need and to identify the material or service requested. Additionally, it provides a record of the request and an approval process to encumber funds.

2. Purchase Order

The purchase order is the end result of a requisition. The purchase order is the vendor's authorization to ship material or perform as specified. It is a legal, binding contract and must be considered as such. The Purchasing Department will issue purchase orders after the receipt of an accurately completed and fully authorized requisition for items that have been appropriately bid. After the purchase order has been issued, the user department may call the vendor to place the order and provide the vendor with the purchase order number.

3. Change Order -

To a Purchase Order for Goods: No changes will be made to an order without the approval of the Purchasing Department staff. Other employees must not authorize changes verbally to the vendor. The Purchasing staff will issue a change order when required authorizing the change.

To a Contract for Services:

The City Council, through this policy, delegates to the City Manager of the City of Seguin authority to approve and administer Change Orders in the amount of \$50,000 or less, as outlined in Section 252.048 of the Local Government Code. In addition, the City Council has authorized the City Manager of the City of Seguin to designate specific staff members to approve and administer Change Orders through the course of their regular duties.

The total contract price may not be increased by more than 25% of the original contract. The contract amount may not be decreased by more than 25% without the consent of the contractor.

Component change orders, each less than \$50,000, but which in the aggregate exceed that amount and which reasonably should have been included in one change order, shall not be used to avoid the prohibitions of the statutes.

4. Invoices

Purchasing personnel will be responsible for coordinating any corrective action required in the event that an invoice does not agree with the purchase order either in quantity, freight, unit price or terms. Invoices should not be paid until the discrepancy is resolved.

X. RECEIVING

Delivery of materials, supplies or equipment may be accepted at the Seguin Purchasing Department for inspection and dispersal to the user department or may be directly delivered by the vendor to the user department.

Standard terms for delivery are F.O.B. Destination, meaning title of the property passes to the City when the item is delivered. The vendor must pre-pay the carrier for the freight. No C.O.D. orders will be accepted.

Purchasing Department staff or the user department receiving the product directly from the vendor will inspect all shipments for damage, quality, quantities and condition. Any necessary freight and/or return claims will be filed immediately, reserving all buyer remedies and rights-to-recovery. The department in receipt of the goods shall be responsible for the return of all materials, equipment or supplies, and insure that all necessary notifications to the vendor and documents are executed for the protection of the City of Seguin's assets.

XI. SURPLUS PROPERTY DISPOSAL

Surplus Property is defined as any City-owned property, other than real estate, that is worn out, outdated or no longer needed for current operations yet still has potential resale value.

Surplus goods include, but are not limited to, equipment, parts, tools, vehicles, computers, software, supplies, paper stock, books and furniture.

Department Directors or his/her designee shall submit a written list of property that they recommend to be designated as surplus to the Purchasing Manager or his/her designee. Recommended disposal of vehicles or other rolling stock will be subject to the Fleet Supervisor input and recommendation.

Purchasing will work with Departments in determining if a resale value exists. Potential resale value shall be determined taking into consideration the cost of preparing the item for sale.

Sale or disposal of surplus property requires prior approval by the City Manager. Any item whose original cost exceeded \$5,000 requires City Council approval prior to disposal of the item by any method.

Items determined to have a potential resale value will be sold by the advertised, sealed bid process, by public auction, or other method as approved by the City Manager that will yield the greatest possible benefit to the City.

Items with no potential resale value may be disposed of in any manner approved by the responsible Department Director following the approval of the City Manager.

In order to maintain the highest appearance of ethical propriety at all times, surplus goods may not be given or sold directly or indirectly to City employees, former employees, or City officials except under exceptional circumstances. Exceptional circumstances for surplus property may be approved with a written recommendation from the employees Department Director and subsequent approval of the City Manager.

City employees may participate, on their own time, in public auctions for the purchase of surplus City goods.

XII. FIXED ASSETS / CAPITAL EQUIPMENT

The City is responsible for keeping records of all of its fixed assets. New assets will be added to the fixed asset records in accordance with the City's capitalization policy. All duties and responsibilities of the fixed assets inventory records are supervised by the Finance Department.

When a fixed asset is to be delivered, the Purchasing Department must be made aware of the delivery date. A representative from both the user department and the Purchasing Department must accept delivery of the equipment. When delivery has been accepted, the Purchasing Manager will issue a fixed asset tag number for the equipment. Invoice and title papers (if applicable) will be given to the Purchasing Manager. User departments must insure that they receive warranty information and that the information is retained in their department. If the asset is a vehicle or mobile equipment, a copy of the invoice must also be given to the fleet maintenance coordinator who will assign a unit number.

Disposal of Assets procedures and form(s) are located in Appendix D of this policy.

XIII. INVENTORY CONTROL AND MANAGEMENT

The inventory facility will stock only those items that are critical to operations and maintenance of the City of Seguin or which can be stocked more economically than if purchased as needed. The inventory facility will maintain a perpetual inventory system to facilitate charges to departments, maintain a usage history by item, and provide for inventory control and materials accounting.

Purchasing/Inventory will maintain the following control policies:

1. Establish the “closed stores system” concept; that is, the inventory areas are secured, with only Purchasing/Inventory personnel stocking and issuing materials.
2. Provide minimum inventory investment and maximum inventory turnover commensurate with minimum “stock outs”. Stock outs refer to not having the material available when requested by departments.
3. Establish safety stock levels, reorder points and order quantities which are aimed at preventing premature arrival or overstocking of materials in anticipation of a project, as well as stock-out conditions. Project scheduling and communication of accurate start dates are the responsibility of the requesting department, in order to allow for lead times necessary for materials processing.
4. Conduct a physical inventory of items in inventory stores at mid-year and year-end or as deemed necessary by management.

APPENDIX A

RECURRING EXPENSES NOT REQUIRING A PURCHASE ORDER

Invoice Submitted Directly to Finance Department

The following recurring monthly expenses do not require a purchase order. Invoices for these expenses must be submitted directly to the Finance Department, with appropriate account coding and signature of supervisor or Director

1. Water
2. Sewer
3. Gas
4. Electricity
5. Telephone
6. Cellular phones
7. Insurance payments (including personal bonds)
8. Package delivery/courier charges, such as Federal Express or UPS
9. Monthly, quarterly or annual payment for contracted services for water rights, wholesale power or solid waste with an invoice
10. Legal services
11. Advertising
12. Subscriptions
13. Membership dues / annual dues
14. Required/mandatory state or federal fees (e.g., TCEQ permits, testing, etc.)

Items without an original invoice must be submitted on a Check Request Form with applicable documentation.

CHECK REQUEST FORM

THIS REQUEST MUST BE ACCOMPANIED BY ORIGINAL INVOICE OR SUPPORTING DOCUMENTATION

DATE: _____

DEPARTMENT: _____

CHECK TO BE ISSUED TO:

VENDOR NAME: _____

VENDOR ADDRESS: _____

INVOICE #/DESCRIPTION/REASON	AMOUNT	ACCOUNT CODE

COMMENTS: _____

REQUESTER SIGNATURE

SUPERVISOR SIGNATURE

APPENDIX B

PROCUREMENT CARD PURCHASING POLICY

PURPOSE AND GENERAL GUIDELINES

- A. "Procurement Card" or "P-Card" is defined as a commercial credit card issued by a bank ("Provider") to a City employee ("Cardholder") for the purchase of materials as required to conduct City business. All charges will be billed to and paid directly by the City. The "Card Administrator" is defined as the City's Finance Director or the Assistant Finance Director.
- B. The Procurement Card is for business purposes only and may not be used for personal transactions.
- C. The Procurement Card is only to be used for purchases for which there are adequate funds available in the appropriate budget to finance the purchase.
- D. There is personal liability associated with the use of the Procurement Card. A Cardholder making an inappropriate or unauthorized purchase will be required to reimburse the City for the purchase. Reimbursements for inappropriate or unauthorized purchases may be deducted from the Cardholder's paycheck.
- E. Cardholder Accounts are subject to periodic internal control reviews and audits designed to protect the interests of the City.
- F. Improper use of the Procurement Card may result in disciplinary action consistent with City policies, up to and including termination and possible prosecution.
- G. Cards will be issued to an individual employee. The employee named on the Procurement Card has the sole responsibility for the use and control of that card. The Cardholder is responsible for notification of a lost card, initiating any refund due and, the dispute process for a questionable charge.
- H. Cards may be issued to a Department. The Director of the Department is responsible for the use and control of that card. Those authorized by the Director and on the City Manager's approved Purchasing List may use the card according to City policy and departmental procedures.
- I. Departmental Cards will be held by the Director or an employee assigned to the duty. Those using the card will sign a form provided by the Card Administrator at the time of card issuance and again at the time the card is returned. Full documentation of transactions is required at the time the card is returned. The individual who has signed the issuance form is responsible for all purchases made while the card is in their possession and is considered the Cardholder during that time. The Cardholder is responsible for notification of a lost card, initiating any refund due and, the dispute process for a questionable charge according to the departmental procedures established by the Department Director.
- J. Verification and full documentation of every transaction is required. Documentation will include an itemized receipt, the purpose of the purchase, as well as the budget account number and project number to be charged for the purchase.

- K. Verification of each transaction is required each billing cycle and should be conducted according to the Procurement Card Provider procedures. All cardholders and users will be instructed on the verification process. This transaction reconciliation must occur in an expeditious manner to avoid a disputed transaction being disallowed by the Provider.
- L. Failure to provide documentation as required in a timely manner will result in the removal of the Cardholder's authority to use the Procurement Card.

PROCUREMENT LIMITS

Dollar amount limits will be established at the time of card issuance. Card limits will consist of a transaction limit as well as a billing cycle limit. In addition, limitations will be placed on the card restricting use at certain types of businesses and for certain types of purchases. (See Restricted Use below.) These limitations will be established according to the needs of the City and the Department and as approved by the City Manager.

Under no circumstances should the procurement card be used to bypass the Purchasing Policy.

The limits may be adjusted for special circumstances by the Card Administrator.

SALES TAX

All purchases made with the Procurement Card are exempt from all cities, state, and federal excise taxes (sales tax). Upon vendor request, a Tax Exemption Certificate will be provided to the vendor by the Finance Department. If sales tax is charged in error, it is the Cardholder's responsibility to contact the vendor to credit the sales tax back to the Procurement Card.

Please note that the City is not exempt from paying Hotel Occupancy Tax.

PROCUREMENT CARD USE

- A. Purchases made on the Procurement Card will be delivered directly to the Department placing the order, not to the Purchasing Department. It is the Cardholder's responsibility to ensure receipt of goods and services and to follow up with vendors to resolve any problems with delivery, discrepancies, and/or damaged goods.
- B. Stacking or making multiple purchases from the same vendor during a short period of time in order to avoid the requirements for competitive quotes is strictly prohibited.
- C. A Cardholder may not use the Procurement Card for a cash advance and may not accept a cash refund for an item purchased on the Procurement Card. A credit back to the card is the only acceptable refund method.
- D. It is the Cardholder's responsibility to obtain transaction receipts from the merchant or supplier each time the card is used. These receipts **MUST** be itemized. Placing an order via phone or internet does not remove the itemized sales receipt requirement.
- E. Each billing cycle, the Cardholder (or Department) will receive an activity statement from the card Provider. Individual transaction receipts are to be attached to this monthly activity report and

submitted to the Cardholder's supervisor for review and approval. Following supervisor approval, the activity report and attached receipts will be forwarded to the appropriate Finance staff.

- F. It is the Cardholder's responsibility to follow-up on any erroneous charges, returns or adjustments and to ensure proper credit is given on subsequent statements according to the Provider's guidelines. The Card Administrator in the Finance Department should be notified of any unresolved, disputed charges.
- G. The Cardholder shall notify the Procurement Card Provider immediately if the Procurement Card is lost or stolen. This is done by calling the Provider's Customer Service Representatives who are available 24 hours a day, 7 days a week. After notifying the Provider, the Cardholder must also notify the Finance Department during the next business day.

LIMITED USE

Procurement Cards may not be used for the following purposes without prior authorization from the City Manager, Director of Finance, or their designee:

- 1. Travel, hotels, airlines, car rental, or meals;
- 2. Food or beverage for City sponsored events

RESTRICTED USE

Procurement Cards should not be used for the following purposes:

- 1. Purchases in excess of the established limits;
- 2. Purchases in violation of or to circumvent other Purchasing policies and limitation;
- 3. Alcohol, entertainment, or personal clothing;
- 4. Food or beverage for departmental/divisional parties such as birthday parties, retirement parties, holiday events, or safety meetings; or for
- 5. Any other illegal, unauthorized, unethical, or otherwise prohibited purpose.

CARDHOLDER AGREEMENT

I have received and read the PROCUREMENT CARD PURCHASING POLICY concerning the use of the City of Seguin's Procurement Card. I understand that as a Cardholder, I assume responsibilities pertaining to the operation and administration of the program. These responsibilities include, but are not limited to the following:

1. I agree that the card is to be used only for authorized City business purchases for which there are sufficient funds available in the current budget.
2. By accepting the card, I assume responsibility for the card and will be responsible for all charges made with the card.
3. I agree to maintain the card with the highest level of security. If the card is lost or stolen, I agree to immediately notify the card Provider and the City's Card Administrator.
4. I agree to verify and reconcile all account activity in a timely fashion and provide itemized receipts for all transactions.
5. I agree to surrender and cease use of the card upon termination of employment and I agree to surrender the card at any time upon the Card Administrator's request.
6. I acknowledge that misuse of the card could result in disciplinary action consistent with City policies, up to and including termination and prosecution.
7. Any unauthorized or improper use of the Procurement Card may be deducted from my paycheck.

By signing below, I acknowledge that I have read and agree to the terms and conditions of this document and I assume the responsibilities listed herein.

Cardholder's Signature:	Cardholder's Title:
Cardholder's Printed Name:	Date:

APPENDIX C

INSURANCE REQUIREMENTS

SECTION A. Prior to the approval of this contract by the City, CONTRACTOR shall furnish a completed Insurance Certificate to the Purchasing office. The certificate shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE IS RECEIVED BY THE CITY OF SEGUIN'S PURCHASING DEPARTMENT, and no officer or employee of the City shall have authority to waive this requirement.

INSURANCE COVERAGE REQUIRED

SECTION B. CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by CITY, based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONTRACTOR.

SECTION C. Subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to CITY, in the following type(s) and amount(s):

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation and Employer's Liability	Statutory

NOTE: For building or construction projects, and services provided at City-owned facilities, the successful Contractor shall meet the minimum requirements defined in the Texas Workers' Compensation Commission Rule 28 TAC §110.110 which follows this insurance attachment.

2. Commercial General (public) Liability including coverage for the following:	
a. Premises operations	\$1,000 per occurrence
b. Independent contractors	\$2,000,000 aggregate
c. Products/completed operations	
d. Personal injury	
e. Advertising injury	
f. Contractual liability	
g. Medical payments	
h. Professional liability*	
i. Underground hazard*	
j. Explosion and collapse hazard*	
k. Liquor liability*	
l. Fire legal liability*	
m. City's property in Contractor's* care, custody, or control	
n. Asbestos specific liability*	
*	Not required for this contract
3. Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards, for:	\$1,000,000 per occurrence
a. Owned/leased vehicles	
b. Non-owned vehicles	

- c. Hired vehicles
- 4. **Errors and Omissions** insurance policy (when applicable) \$1,000,000 per occurrence or claim
\$2,000,000 aggregate
for the willful or negligent acts or omissions of any no less than officers, employees, or agents thereof
- 5. **Cyber** (when applicable) \$2,000,000

ADDITIONAL POLICY ENDORSEMENTS

CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

CONTRACTOR agrees with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions.

- a. Name the City of Seguin and its officers, employees, and elected representatives as an Additional Insured(s), (as the interest of each insured may appear) to all applicable coverage.
- b. Provide for 30 days notice to City for cancellation, non-renewal, or material change.
- c. Provide for notice to City at the address shown below by registered mail.
- d. CONTRACTOR agrees to waive subrogation against the City of Seguin, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.
- e. Provide that all provisions of this agreement concerning liability, duty, and standard of care together shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- f. For coverages that are **only** available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five years which shall begin at the end of the warranty period.

NOTICES

CONTRACTOR shall notify CITY in the event of any change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following address:

Purchasing Department
City of Seguin
P.O. Box 591
Seguin, Texas 78156

SECTION D. Approval, disapproval, or failure to act by CITY regarding any insurance supplied by CONTRACTOR shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate CONTRACTOR from liability.

WORKERS COMPENSATION INSURANCE
for
Building or Construction Projects and Services Provided at City-Owned Facilities

TEXAS WORKERS' COMPENSATION COMMISSION RULE 28 § 110.110

As required by the Texas Workers' Compensation Rule 28, §110.110, the Contractor shall accept the following definitions and comply with the following provisions:

Workers' Compensation Insurance Coverage

A. Definitions:

1. Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
2. Duration of the project-includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the City of Seguin.
3. Persons providing services on the project ("subcontractor" in Section 406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the City of Seguin prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City of Seguin showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the City of Seguin:

1. A certificate of coverage, prior to that person beginning work on the project, so the City of Seguin will have on file certificates of coverage showing coverage for all persons providing services on the project; and
2. No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

G. The Contractor shall notify the City of Seguin in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
 3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - a. A certificate of coverage, prior to the other person beginning work on the project; and
 - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 5. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 6. Notify the City of Seguin in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City of Seguin that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Seguin to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City of Seguin.

As defined by the Texas Labor Code, Chapter 269, Section 406.096(e), building or construction is defined as:

1. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
2. Remodeling, extending, repairing, or demolishing a structure; or
3. Otherwise improving real property or an appurtenance to real property through similar activities.

The employment of a maintenance employee who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

APPENDIX D

CITY OF SEGUIN DISPOSAL OF ASSETS

This policy is intended to establish and describe the basic guidelines and policies for the disposal of assets for the City of Seguin.

- I. Assets shall be considered for disposal when any of the following conditions are met:
 - A. The asset is obsolete or out dated.
 - B. The asset is no longer functional for any departments within the City.
 - C. The asset is considered too costly to repair.

- II. Assets can be disposed of in the following manner:
 - A. Public auction, online or live.
 - B. Sealed bids.
 - C. Donated.

- III. Approval of disposal is as follows:
 - A. If the asset's original cost was less than \$5,000, the City Manager can authorize the disposal of the asset.
 - B. If the asset's original cost was \$5,000 or more, the City Council must approve the disposal.
 - C. If the City wishes to donate the asset, City Council must approve the donation.
 - D. If the asset is being sold by sealed bids, City Council must approve that sale.

DISPOSAL OF ASSET FORM

DEPARTMENT: _____

DATE: _____

CHECK ALL THAT APPLY:

_____ The asset is obsolete or outdated

_____ The asset is no longer functional for any departments within the City

_____ The asset is considered too costly to repair

Description of asset to be disposed of:

City of Seguin asset tag number: _____

Unit number (if applicable): _____

Model Number: _____

Serial Number or VIN: _____

If asset does not have a City of Seguin tag,
please estimate original cost of asset: \$ _____

*To be completed by Finance Dept. only:
If asset does have a City of Seguin tag,
Finance will complete the original cost of asset \$ _____*

_____ *Asset's original cost was less than \$5,000, City Manager can authorize the disposal of the asset.*

_____ *Asset's original cost was \$5,000 or more, the City Council must approve the disposal of the asset.*

_____ *Asset is being sold by sealed bids, City Council must approve the sale.*

Department Director's signature

Date

Director of Finance's signature

Date

City Manager's signature

Date

APPENDIX E

PURCHASING SUMMARY

For goods and services NOT specifically exempted in Appendix A

Purchase Amount:	Authorized By:	Bids Req'd	Purchasing Method
\$0 to \$499.99 at a Merchant with City account	Authorized on Purchasing List with Supervisor's approval	no	No Purchase Order required No P-Card required
\$500 to \$2,999.99 at a Merchant with City account	Requisitioner and Supervisor	no	Purchase Order or P-Card required
\$0 to \$2,999.99 anywhere without City account	Requisitioner and Supervisor	no	Purchase Order or P-Card required
\$3,000 to \$9,999.99	Requisitioner, Supervisor and Director	yes	Informal Bid Process Purchase Order required
\$10,000 to \$49,999.99	Above plus City Manager	yes	Informal Bid Process Purchase Order required
\$50,000 or more	Above plus City Manager after City Council approval	yes	Formal Sealed Bid Process Purchase Order required

APPENDIX F

The City of Seguin follows State of Texas and Federal 2CFR 200.318-326 and Appendix II to Part 200 procurement law and guidance in the purchasing and contract management of goods and services procured with state and federal funding. Appendix F addresses the City of Seguin's requirements pertaining to such procurements and contains the documents listed below.

Code of Federal Regulations, Title 2: Grants and Agreement Procurement Standards:

- 200.318 – General Procurement Standards
- 200.319 – Competition
- 200.320 – Methods of Procurement to be followed
- 200.321 – Contracting with Small & Minority businesses, women business enterprises & labor surplus area firms
- 200.322 – Procurement of Recovered Materials
- 200.323 – Contract Cost & Price
- 200.324 – Federal awarding agency or pass-through entity review
- 200.325 – Bonding requirements
- 200.326 – Contract Provisions

Checklist for Reviewing Procurements by Federal Grant Recipients and Subrecipients

C.F.R. Part 200, Appendix II

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Code of Federal Regulations

Title 2: Grants and Agreements

[PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS](#)

[Subpart D—Post Federal Award Requirements](#)

PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

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

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

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

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

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

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

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

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

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

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

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

(i) The actual cost of materials; and

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

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

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

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

§200.319 Competition.

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

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

- (7) Any arbitrary action in the procurement process.

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

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

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

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

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

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

§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]

§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.

§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]

§200.323 Contract cost and price.

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

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

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

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

§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.

§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.

§200.326 Contract provisions.

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

Checklist for Reviewing Procurements by Federal Grant Recipients and Subrecipients

This checklist was created to assist FEMA recipients and subrecipients in complying with the federal requirements that procurements must meet in order for FEMA to reimburse eligible expenses. Importantly, this checklist is intended to provide general guidance only and does not provide a detailed explanation of the Federal procurement requirements – it is not intended to serve as legal advice and FEMA makes no guarantee that adherence to this checklist will result in full reimbursement of eligible expenses. To understand the requirements fully, the user should review the provisions of 2 C.F.R. § 200.317 – 326, which is the source of these requirements. In addition, the user may review FEMA’s Field Manual, *Public Assistance Grantee and Subgrantee Procurement Requirements*, which is available on the internet by searching for “FEMA Procurement Field Manual.” While the Field Manual was drafted to specifically address the Federal procurement standards that were in effect prior to 26 December 2014 (44 C.F.R. § 13.36(a)-(i) – States, Local and Tribal Governments; and 2 C.F.R. § 215.40-48 – Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), many of the concepts are similar or identical in substance, and thus remains an excellent tool for navigating the current Federal procurement standards. If any questions arise, please contact your servicing attorney or legal counsel for assistance.

2 C.F.R. § 200.317 – 326 became effective on December 26, 2014. For disasters (and their associated projects) declared prior to that date, the relevant procurement standards can continue to be found in 44 C.F.R. § 13.36(a)-(i) (States, local and tribal governments) and 2 C.F.R. § 215.40-48 (Institutions of Higher Education, Hospitals, and Private Non-Profits).¹ As indicated above, while many of the concepts are similar or identical, there are some substantive differences between the old and the new standards. Accordingly, this checklist should not be used for procurements associated with declarations issued prior to 26 December 2014. Instead, see procurement standards Checklists 13.36 and 215.

Instructions: Each standard below is followed by a block for “Yes”, “No”, or in some cases, “Not applicable”. **Red font** is used to indicate the response which, if checked, indicates that the contract does not comply with federal requirements.

The term “non-Federal entity” (NFE) below refers to the entity that is conducting the procurement action (i.e., the state, local, or tribal government or private-non-profit entity).

¹ This includes projects associated with declarations issued prior to 26 December 2014, regardless of project start date. For example, if a disaster was declared on 1 November 2014, but contracting for a project under that declaration did not begin until 1 April 2015, then a State (or state agency/instrumentality) would still utilize the old procurement standards found at 44 C.F.R. § 13.36(a); local and tribal governments would follow § 13.36(b)-(i); and Institutions of Higher Education, Hospitals, and Private Non-Profits would use 2 C.F.R. §§ 215.40-48.

1. Does the procurement comply with the State’s own procurement laws, rules, and procedures? §200.317 **Y Yes Y No**
2. Does the procurement comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322. **Y Yes Y No Y N/A – ~~w~~does not involve the use of materials (e.g., debris removal or other services)**
3. Does the contract include the following clauses?²
 - a. *If the contract amount exceeds \$150,000*³, does it address **administrative, contractual, or legal remedies** in instances where contractors violate or breach contract terms, and provide for sanctions and penalties? **Y Yes Y No Y N/A**
 - b. *If the contract amount exceeds \$10,000*, does it address **termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement**? **Y Yes Y No Y N/A**
 - c. *If the contract is for construction*, does it include the required **Equal Employment Opportunity clause**?⁴ **Y Yes Y No Y N/A**
 - d. *For construction contracts exceeding \$2,000 awarded under a Federal grant*, does the contract include a **Davis-Bacon Act clause**⁵ and **Copeland “Anti- Kickback” Act clause**⁶ addressing prevailing wage rates? [Note that Public Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses.] **Y Yes Y No Y N/A**

² See Appendix II of 2 CFR part 200 for a more detailed description of these clauses. See also PDAT Manual, section IV.H for a detailed discussion of these clauses, including sample text.

³ \$150,000 is the current dollar threshold for the simplified acquisition threshold, as authorized by 41 U.S.C. § 1908.

⁴ The EEO clause can be found at 41 C.F.R. § 60-1.4(b).

⁵ [Insert sample text]

⁶ The clause may read as follows:

Compliance with the Copeland “Anti-Kickback” Act

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- e. *If the contract amount exceeds \$100,000 and involves the employment of mechanics or laborers, does the contract include a **Contract Work Hours and Safety Standards clause**?⁷ Yes No N/A*
- a. Rights to Inventions Made Under a Contract or Agreement.⁸ N/A
- b. *If the contract or subgrant amount exceeds \$150,000, does the contract include clauses addressing the **Clean Air Act and the Federal Water Pollution Control Act**?⁹ Yes No N/A*
- c. *Does the contract include 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 (42 U.S.C. § 6201)? Yes No*
- d. *Does the contract include a **Suspension and Debarment clause**?¹⁰ Yes No¹¹*
- e. *Does the contract include an **Anti-Lobbying clause**?¹² Yes No*

⁷ 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.

⁸ As FEMA does not award grants or subgrants associated with research and development projects, this contract clause is inapplicable.

⁹ The clause may read as follows:

Contractor agrees 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), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

¹⁰ See PDAT Manual, pgs. 99-100 for sample text.

¹¹ A prospective contractor that is listed on the government-wide Excluded Parties List System in the System for Award Management (www.SAM.gov) as suspended or debarred, **CANNOT** be awarded a contract funded with Federal assistance.

¹² See PDAT Manual, pgs. 127-129. The clause may read substantially as follows:

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

- i. For contracts exceeding \$100,000, have bidders submitted an Anti-Lobbying Certification? Yes No N/A
- f. *Does the contract include a clause requiring the contractor to maximize use of recovered/recycled materials?* Yes No N/A – work does not involve the use of materials (e.g., debris removal or other services)

If a State agency is awarding the contract, stop here. If the contract is being awarded by a local or tribal government or private nonprofit entity, continue with the checklist.



4. General requirements¹³

- a. *Does the procurement comply with the NFE's*¹⁴ *own procurement laws, rules, and procedures?* §200.318(a) Yes No
- b. *Does the NFE maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders?* §200.318(b) Yes No
- c. *Does the NFE have - §200.318(c)(1):*
 - i. *Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts?* Yes No
 - ii. *Any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award that has an actual or apparent conflict of interest?*¹⁵ Yes No
 - iii. *Any employee, officer, or agent that has solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts?*¹⁶ Yes No
 - iv. *Written standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.* Yes No

¹³ See, 2 C.F.R. § 200.318

¹⁴ Non-Federal Entity (NFE)

¹⁵ 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.

¹⁶ However, NFEs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

- d. *If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, does the non-Federal entity have written standards of conduct covering organizational conflicts of interest? § 200.318(c)(2)¹⁷ Y Yes Y No Y N/A*
- e. The NFE must avoid acquisition of unnecessary or duplicative items. Has the NFE *considered* consolidating or breaking out procurements to obtain a more economical purchase? Where appropriate, has the NFE considered lease versus purchase alternatives? § 200.318(d) Y Yes Y No
- f. *Encouraged*, but not required standards.¹⁸
- g. *Is the contract being awarded to a responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources? § 200.318(h) Y Yes Y No*
- h. *Is the NFE keeping records sufficient to detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price? § 200.318(i) Y Yes Y No*
- i. *Is the contract a time-and-materials contract?¹⁹ § 200.318(j) Y Yes Y No*
 - i. If so, has the NFE documented why no other contract is suitable?
Y Yes Y No

¹⁷ Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

¹⁸ §200.318(e) – to foster greater economy and efficiency, the NFE 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 (this section provides the authority for state schedule and mutual aid agreements, for example); §200.318(f) – NFEs are 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; and §200.318(g) – NFEs are encouraged to use value engineering clauses in contracts for construction projects (value engineering is a systematic and creative analysis of each contract item or task to encourage the contractor to develop more cost effective means to produce or procure requirements.).

¹⁹ 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. Because 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, a time-and-materials 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. **[Note that FEMA will only reimburse costs under a time-and-materials contract for the first 70 hours of work performed. See FEMA PA Guide (2007 ed.), pg. 53.]**

ii. Does the contract include a ceiling price that the contractor exceeds at its own risk? **Yes** **No**

j. *Is the NFE alone* responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? §200.318(k) **Yes** **No**

5. Competition:

a. All procurement transactions must be conducted in a manner providing **full and open competition** consistent with the standards of this section. *Does the procurement involve any of the following*²⁰ § 200.319(a):

i. Placing unreasonable requirements on firms in order for them to qualify to do business? **Yes** **No**

ii. Requiring unnecessary experience and excessive bonding? **Yes**
 No

iii. Noncompetitive pricing practices between firms or between affiliated companies?²¹ **Yes** **No**

iv. Noncompetitive contracts to consultants that are on retainer contracts?²² **Yes** **No**

v. Organizational conflicts of interest?²³ **Yes** **No**

vi. 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? **Yes** **No**

vii. Any arbitrary action in the procurement process? **Yes** **No**

b. Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals? (If so, that contractor must be excluded from competing for such procurements) § 200.319(a) **Yes** **No**
 N/A

²⁰ This list is non-exclusive and only serves as an example of some of the types of situations that are considered to be restrictive of competition.

²¹ For example, bid suppression or bid rigging.

²² For example, out-of-scope disaster work added to the consultant’s work on retainer.

²³ See, Fns 14 & 16.

- c. *Does the contract include a state or local geographic preference for local contractors?*²⁴ § 200.319(b) **Y Yes Y No**
- d. Do the NFE's written procurement procedures ensure that all solicitations comply with the following: § 200.319(c)
 - i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured? § 200.319(c)(1) **Y Yes Y No**
 - ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals? § 200.319(c)(2) **Y Yes Y No**
- e. If the NFE is using a prequalified list of persons, firms, or products which are used in acquiring goods and services: § 200.319(d) *N/A*
 - i. Is the list current? *Yes* *No*
 - ii. Does the list include enough qualified sources to ensure maximum open and free competition? *Yes* *No*
 - iii. Were any potential bidders precluded from qualifying during the solicitation period?²⁵ **Y Yes Y No**

6. *Method of Procurement*

- a. Is the NFE using one of the following acceptable methods of procurement? § 200.320
 - i. **Micro-purchase** (i.e., purchases below \$3,000, see, §200.67 Micro-purchases). § 200.320(a) **Y Yes Y No**
 - 1. [Note: Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.]
 - 2. To the extent practicable, is the NFE distributing micro-purchases equitably among qualified suppliers? **Y Yes Y No**
Y N/A – not practicable
 - ii. **Small purchase procedures** § 200.320(b) **Y Yes Y No**

²⁴ Geographic preferences are generally not allowed under FEMA grants. The only exception is that 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.

²⁵ Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

1. [Note: 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 *lesser* of either (1) the federal small purchase threshold (i.e., \$150,000), *or* (2) whatever amount State or local procurement rules set as the small purchase threshold – *if more restrictive than the federal threshold.*]
2. Did the NFE obtain price or rate quotations from an adequate number of qualified sources?²⁶ **Y Yes Y No**

iii. Sealed bids § 200.320(c)²⁷ Y Yes Y No

1. [Note: 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. Sealed bidding is the preferred method for procuring construction]
2. Are *all* of the following conditions to use sealed bidding present? § 200.320(c)(1) **Y Yes Y No**
 - a. A complete, adequate, and realistic specification or purchase description is available **Y Yes Y No**
 - b. Two or more responsible bidders are willing and able to compete effectively for the business **Y Yes Y No**
 - 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 **Y Yes Y No**
3. *If sealed bids are used*, the following requirements apply: § 200.320(c)(2)

²⁶ FEMA has determined that for simplified purchase procedures, an adequate number of qualified sources is considered to be three (3). *See*, FEMA Recovery Fact Sheet 9580.212 – Public Assistance Grant Contracting Frequently Asked Questions (FAQ), FAC No. 3.

²⁷ Sealed bidding is generally used where price is the most important evaluation factor for the NFE. Accordingly, contract award under the sealed bidding method of procurement is made to the bidder submitting *the lowest priced, responsive and responsible bid*. “Responsive” refers to whether the bidder meets all the material requirements of the Invitation for Bid (IFB), while “Responsibility” is described at § 200.318(h).

- a. Did the NFE solicit bids from an adequate number²⁸ of known suppliers, providing them sufficient response time prior to the date set for opening the bids? **Y Yes Y No**
- b. If the NFE is a local or tribal government, was the invitation for bids publically advertised? **Y Yes Y No N/A**
- c. Did the invitation for bids include any specifications and pertinent attachments, and define the items or services in order for the bidder to properly respond? **Y Yes Y No**
- d. Did the NFE open all bids at the time and place prescribed in the invitation for bids? **Y Yes Y No**
- e. For local and tribal governments, were the bids opened publicly? **Y Yes Y No Y N/A**
- f. Did the NFE award a firm fixed price contract award in writing to the lowest responsive and responsible bidder? **Y Yes Y No**
- g. If any bids were rejected, was there a sound documented reason supporting the rejection? **Ye s** **No** **N/A**

iv. Procurement by competitive proposals²⁹ § 200.320(d) Y Yes Y No

1. [Note: 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.]
2. Did the NFE publicize the Requests For Proposals (RFPs) and identify all evaluation factors and their relative importance? **Y Yes Y No**

²⁸ Unlike, for simplified purchase procedures, FEMA has not defined an “adequate number” of known sources under the sealed bidding method. While left undefined, a NFE is likely to meet this requirement through the application of “full and open competition.” (See fn. 26)

²⁹ Whereas contract awards under sealed bidding are focused on selecting the lowest responsive responsible bid, NFEs under the competitive procurement method may prioritize non-price factors, such as technical capability or past performance, over price and therefore award a contract to a contractor whose proposal is more expensive but reflects a better overall value to the NFE (e.g. “best value” contracting).

3. Did the NFE solicit proposals from an adequate number of qualified sources?³⁰ **Y Yes Y No**
4. Did the NFE have a written method for conducting technical evaluations of the proposals received and for selecting recipients?
Y Yes Y No
5. Did the NFE award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered? **Y Yes Y No**
6. [Note regarding architectural/engineering (A/E) professional services: The NFE may use competitive proposal procedures for qualifications-based procurement of 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 that are a potential source to perform the proposed effort.**]

v. Noncompetitive proposals § 200.320(f)³¹ Y Yes Y No

1. [Note: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s)]
2. Do one or more of the following circumstances apply? **Y Yes Y No**
 - a. The item is available only from a single source **Y Yes Y No**
 - b. The public exigency or emergency³² for the requirement will not permit a delay resulting from competitive solicitation **Y Yes Y No**
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in

³⁰ Unlike, for simplified purchase procedures, FEMA has not defined an “adequate number” of qualified sources under the competitive procurement method. While left undefined, a NFE is likely to meet this requirement through the application of “full and open competition.”

³¹ § 200.320(e) is reserved.

³² For an explanation of what “emergency” and “exigency” mean, see PDAT Manual, pg 68.

response to a written request from the non-Federal entity
Y Yes Y No

- d. After solicitation of a number of sources, competition is determined inadequate.³³ Y Yes Y No

7. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

- a. Has the NFE taken the following affirmative steps³⁴ to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible?³⁵ § 200.321 Y Yes Y No N/A (document)
- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists? Y Yes Y No Y N/A (document)
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources? Y Yes Y No Y N/A – no potential sources (document)
 - 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?³⁶ Y Yes Y No Y N/A – not economically feasible (document)
 - iv. Establishing delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses, and

³³ Before utilizing this exception, Applicants should review their solicitation and the publicizing of their solicitation to ensure that it was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this is found to be the case, the Applicant should revise the solicitation and re-publicize the solicitation in order to resolve the competitive concerns.

³⁴ The following affirmative steps are non-exclusive; while these steps must be taken, additional steps, as determined by the NFE, local, state, or tribal government regulations or procedures, may also be taken.

³⁵ Collectively referred to as “socioeconomic contractors” or “socioeconomic contracting,” this requirement does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms; this requirement only imposes an obligation to carry out and document the six identified affirmative steps. Failure to do so has been frequently identified as a justification to de-obligate funding by the Department of Homeland Security (DHS), Office of Inspector General (OIG).

³⁶ This is not the same as breaking a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds to utilize their streamlined acquisition procedures (e.g. “project splitting.”)

women's business enterprises? Yes No N/A – **requirement does not permit (document)**

- 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 Yes No N/A – **not appropriate (document)**
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above? Yes No N/A – **no subcontracts will be let (document)**

8. Contract cost and price

- a. *If the contract amount (including contract modifications) exceeds \$150,000, did the NFE perform a cost or price analysis? § 200.323(a)* Yes No N/A
- b. *Did the NFE 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? § 200.323(b)* Yes No N/A
- c. *Is the contract a “cost plus a percentage of cost” or “percentage of construction cost” contract?³⁷ [Note: This form of contract is prohibited under the Federal procurement standards and is ineligible for FEMA reimbursement]*
 Yes No

9. Bonding requirements for construction or facility improvement contracts exceeding \$150,000

- a. [Note: *For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (i.e., \$150,000), the Federal*

³⁷ This type of contract is separate and distinct from cost plus fixed fee, cost plus incentive fee, and cost plus award fee type contracts, which are permissible and used to incentivize contractors to perform to a higher standard of quality, lower cost, or faster performance. Cost plus percentage of cost contracts on the other hand provide none of these incentives; instead, there is a reverse incentive for the contractor to increase its costs as the higher its costs go, the more profit it earns, as its potential earnings are uncapped. The following characteristics are suggestive of a prohibited cost plus percentage of cost contract: (1) payment is on a predetermined percentage rate; (2) the predetermined percentage rate is applied to actual performance costs; (3) the contractor's entitlement is uncertain at the time of contracting; and (4) the contractor's entitlement increases commensurately with increased performance costs.

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.]

- b.** If such a determination (see above) has not been made, does the procurement include the following? **Y Yes Y No Y N/A**
 - i.** A bid guarantee from each bidder equivalent to five percent of the bid price? **Y Yes Y No Y N/A**
 - 1. 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.
 - ii.** A performance bond on the part of the contractor for 100 percent of the contract price? **Y Yes Y No Y N/A**
 - 1. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii.** A payment bond on the part of the contractor for 100 percent of the contract price. **Y Yes Y No Y N/A**
 - 1. 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.

END OF CHECKLIST

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early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. Reporting—Required. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require.

G. FEDERAL AWARDING AGENCY CONTACT(S)—REQUIRED

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

- i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
- ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

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H. OTHER INFORMATION—OPTIONAL

This section may include any additional information that will assist a potential applicant. For example, the section might:

- i. Indicate whether this is a new program or a one-time initiative.
- ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.
- iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.
- iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.
- v. Include certain routine notices to applicants (e.g., that the Federal government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal government to the expenditure of funds).

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 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 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) 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 (42 U.S.C. 6201).

(I) 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 Excluded Parties List System 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.” The Excluded Parties List System in SAM 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.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more 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.

(K) See § 200.322 Procurement of recovered materials.

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section: indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period*. A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings*. The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. 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. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. 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.
- d. 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.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the next subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. As such, FEMA requires the following contract clause:

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

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. 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.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

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

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
 - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

- (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally-required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. 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. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

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

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

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

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

Prohibition on Certain Telecommunications Equipment or Services

The Federal Register Notice issued the Final Rule and states that the amendment to 2 CFR 200.216 is effective on August 13, 2020. The new 2 CFR 200.471 regulation provides clarity that the telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable for services and equipment from these specific providers. [OMB's Federal Register Notice](#) includes the new 2 CFR 200.216 and 2 CFR 200.471 regulations.

Per the Federal Law referenced above, use of services, systems, or services or systems that contain components produced by any of the following manufacturers is strictly prohibited for use on this project. Therefore, for any telecommunications, CCTV, or video surveillance equipment, services or systems cannot be manufactured by, or have components manufactured by:

- Huawei Technologies Company,
- ZTE Corporation (any subsidiary and affiliate of such entities),
- Hyatera Communications Corporation,
- Hangzhou Hikvision Digital Technology Company,
- Dahua Technology Company (any subsidiary and affiliate of such entities).

Violation of this requirement will require replacement of the equipment at the contractor's expense.

GENERAL CONDITIONS OF BIDDING

APPENDIX G

These general conditions apply to any procurement of products or services by the City of Seguin. Failure to comply with these General Conditions of Bidding may result in the bid being disqualified.

1. DEFINITION OF TERMS

A. "Bid documents" mean the entire packet of documents provided to bidders, including, but not limited to the General Conditions of Bidding, General Conditions of Agreement, General and/or Technical Specifications, Special and Supplementary Conditions, Information to Bidders, Bid Form(s) and any Addendum.

B. "Bidder" means a person or firm submitting a bid, proposal, or quote to provide equipment, material, and/or services necessary in the performance of these specifications, and competing for award of a contract.

C. "Bid" or "Proposal" means an offer to perform or provide the requirements specified herein. "Furnish" or "provide" means to supply, equip, and deliver the specified equipment, material and/or services to the Purchaser.

D. "Formal Bid" is a formally advertised solicitation for acquiring goods, services, and construction that requires a public opening of sealed bids or proposals, generally \$50,000 or more.

E. "Informal Bid" is a competitive bid or price quotation for supplies or services under \$50,000 that is conveyed by letter, telephone, or other means and does not require a sealed bid, public opening, or public reading of bids.

F. "City", "Purchaser", or "Owner" shall refer to the City of Seguin, PO Box 591, Seguin, Texas 78156-0591.

G. "Contract" means the contract awarded pursuant to this solicitation.

H. "Contractor" or "Vendor" means the bidder to which a contract award has been made by the City.

I. "Purchase Order" means the document issued by the City that creates a legal binding contract between the City and the Contractor and authorizes the Contractor to ship goods pursuant to the contract.

2. SUBMISSION OF BIDS

A. All bids must be on blank forms furnished by the Purchasing Department and must be written in ink or typed. Pencil quotations will not be considered. Proposals must be submitted on the forms or in the format called for in specifications. Each must be executed personally by the bidder, or if executed by an agent, a power of attorney or other evidence of his authority to act on behalf of the bidder must accompany the bid. If the bidder is a corporation, the certificate of corporate bidder must be executed under the corporate seal by some duly authorized officer of the corporation other than the officers signing the bid. By execution of the bid, the bidder accepts all general and special conditions of the contract and the specifications.

GENERAL CONDITIONS OF BIDDING

B. Formal sealed bids and proposals must be received at the date, time, and place specified in the bid document packaged in a sealed envelope (8 1/2" x 11" minimum) clearly marked with the bid or project name, bid number, and date/time of opening, unless otherwise specified. An early postmark will not suffice. Bids and proposals will be publicly opened and read followed by evaluation and award at a later date. **Formal bids and proposals (\$50,000 or higher) may NOT be faxed or submitted via e-mail.**

C. Informal bids are due at the date, time, and place stated in the bid document. **Informal bids (less than \$50,000) may be faxed or submitted via e-mail.**

D. Each Bidder agrees that its price will remain firm and subject to acceptance by the City for a period of sixty (60) calendar days from the bid opening date. The prices quoted in the bid shall not be subject to escalation except where otherwise clearly indicated by the Bidder or by the City in bid documents. The basis for the escalation shall be clearly indicated in either case.

E. All information required by the bid documents will be furnished. The bidder will print or type its name, in ink, and manually sign the bid sheet. The bid sheet, with original signatures, must be submitted.

F. All prices shall be quoted as required in the specifications. Unit prices will be shown when called for on the bid sheet, and where there is a conflict between the unit price show and the total price shown, the unit price will govern.

G. No change in price will be considered after bids have been opened. The City reserves the right to negotiate prices as submitted by proposal as allowed by state statute.

H. In case of ambiguity or lack of clarity in stating prices in the bid, Purchaser reserves the right to adopt the price written in words or reject the bid. Any ambiguity in the bid as a result of omission, error, unintelligible or illegible wording shall be construed in the favor of the City.

I. If this bid is altered, any erasure or alteration of figures on the item on which the erasure or alteration is made must be initialed by signee of this bid.

J. The City reserves the right to extend the bid closing time and date. Notification will be made by addendum.

K. The City reserves the right to increase or decrease the quantity specified, unless the bidder specified otherwise.

3. WITHDRAWAL OF BIDS

A. A Bidder may withdraw a bid before Council acceptance of the bid without prejudice to himself by a written request addressed to the Purchasing Manager.

B. If there is an honest mistake in the bid, due to clerical errors, and the bidder calls attention thereto promptly, the bidder will not be bound by the bid.

C. When the mistake was a result of a bidder's negligence, and City has no knowledge of the mistake when bids were opened, and awarded a contract based on the bid, bidder will not be released and shall be bound by the bid.

GENERAL CONDITIONS OF BIDDING

- D. If a mistake is not discoverable and verifiable by the City, bidder's incorrect interpretation of Engineering specifications set forth in a construction contract will not release him from his obligations, once a contract has been awarded by City Council and bidder has received notice of such award.

4. GENERAL CONDITIONS

Bidders will submit their bids or proposals upon the following express conditions:

- A. Bidders shall thoroughly examine all drawings, specifications, plans, schedules, instructions, and all other contract documents pertaining to this bid.
- B. Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of materials or equipment as required by the bid conditions. No plea of ignorance by the Bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
- C. If any bidder is in doubt as to the true meaning of the specifications, other bid documents, or any part thereof, they may submit a written request for clarification to the Purchasing Manager. A request for clarification should be submitted by the deadline, if any, indicated in the specifications.
- D. All materials, equipment, supplies which are new, non-standard to the City of Seguin, and/or items which are to be listed as an alternate or exception must be pre-approved PRIOR to placing them on a bid proposal. In order to fairly evaluate all bids, sufficient time requirements for possible field testing or demonstrations should be allowed.
- E. Bidders are advised that City contracts are subject to all legal requirements under Local, State and Federal statutes, ordinances, and regulations. Any bid, after being opened, becomes subject to the Public Information Act, Government Code Chapter 552; therefore bidders must clearly indicate any portion of the submitted bid that the bidder claims is not subject to public inspection under the Public Information Act.
- F. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee.
- G. The City of Seguin is committed to maintaining fair and open competition as required by local, state, and federal laws and statutes. Every effort is made to maintain the highest level of ethical conduct in every aspect of the procurement process. Sharp business practices or high-pressure tactics will not be tolerated. Qualification and selection of vendors is based on those vendors who share the same high standards of ethical conduct.

5. DESCRIPTION OF GOODS

- A. Any catalog or manufacturer's reference in this bid is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Any such references are made a part of these contract documents as if incorporated verbatim herein.

GENERAL CONDITIONS OF BIDDING

B. The term "Or Equal", if used, is intended to allow substitution of a brand which has all the essential performance, features, reliability, and other salient characteristics as the brand name and model stated in the item description. "Or Equal" is intended to establish a level of quality and function and is not to be interpreted as a preference for a particular brand. Other brands meeting these minimum requirements will be accepted. Bid submitted on an "Or Equal" item must clearly identify the proposed product, the quantity of the product, model, and type, as applicable.

C. Alternate bids will not be considered unless expressly authorized by the bid documents.

6. PREPARATION OF BID

Bidders will prepare bids in accordance with the following:

A. Specifications are written to encourage competition. The specifications herein shall be the basis of comparison between bidders. There is no intent to discriminate against any supplier or vendor but rather, to set a definite standard of performance. Bidders are required to quote services and/or equipment that will meet or exceed the minimum or maximum specifications herein.

B. Any omission in the specifications of any minor requirement necessary to make each unit complete and functional shall not relieve the Supplier of responsibility to furnish any material or equipment necessary.

C. The City reserves the right to request clarification to assist in evaluating the bidder's response when the bid response is unclear with respect to product pricing, packaging or other factors. The information provided is not intended to change the bid response in any fashion and such information must be provided within two days from request.

D. Bidders shall not include federal taxes nor State of Texas limited sales, excise and use taxes in bid prices since the City of Seguin is exempt from payment of such taxes under section 151.309 of the Texas Tax Code.

E. By submitting a bid, each bidder certifies that it is a duly qualified, capable, and bondable business entity, that it is not in or contemplating bankruptcy or receivership and that it is not currently delinquent with respect to payment of taxes assessed by any political subdivision.

F. By submitting a bid, each bidder certifies that it does not currently owe any money to the City.

G. The City is exempt from the Federal Excise and Transportation Tax, and the Limited Sales and Use Tax. Unless the bid form or specification specifically indicates otherwise, the price bid must be net exclusive of the above-mentioned taxes and will be so construed.

H. Prompt payment discounts will not be considered in determining low bids and making awards.

7. BID DEPOSIT

No bid deposit will be expected of bidder UNLESS specifications expressly provide otherwise. If a bid bond is required, the submitted bond may be in the form of a cashier's check, cash, a certified check made payable to the City of Seguin or an original bond submitted in the form required by the City in the Bid Documents. The bond shall be executed by a surety authorized by the Texas State Insurance Commission and must be signed by both the surety and the bidder. Should a bid deposit be presented in a form not acceptable to the City, the bid will not be considered.

GENERAL CONDITIONS OF BIDDING

8. EXCEPTIONS

If Bidder takes exceptions to any provisions of the specifications, the exceptions must be specifically and clearly identified by section in Bidder's bid, and Bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire bid document.

9. ADDENDA

Any clarification or interpretation of the bid, if made, will be made only by written addendum issued through the Purchasing Department and signed by the City of Seguin Purchasing Manager. A copy of such Addendum will be mailed or delivered to each person receiving bids. Addenda to the bid documents may be issued in response to a request for clarification or objection, or for any other reason the City considers advisable. Once issued, an addendum becomes a part of the bid documents. All addenda can be viewed and downloaded at the City's website: www.seguintexas.gov. It is the bidder's responsibility to check this site to determine if the City has issued any addenda. The City will not be responsible for any other explanation or interpretation of the bid made or given prior to the award of the contract.

10. REJECTION OF BIDS

A. The City of Seguin reserves the right to accept or reject any or all bids, and to waive any informalities and technicalities. The City of Seguin shall consider all factors it believes to be relevant in selecting the offer that provides the best value for the City including, but not limited to, the offered price. Causes for bidder disqualification and rejection of bids may include, but shall not be limited to:

1. Bidder's current inability to satisfactorily perform the work or service, or the bidder's previous failure to properly and timely perform its obligations under a contract with the City. Purchaser may make such investigation as is deemed necessary to determine the ability of the Bidder to provide the equipment, material, and/or services as required by this specification and to determine the adequacy of the proposed equipment, material, and/or services. The Bidder shall furnish, upon request, all such data and information requested for this purpose. The information provided is not intended to change the bid response in any fashion and such information must be provided within **two** days from request.
2. Bidder's current violation of any City ordinance.
3. Bidder's misstatement or concealment of any material fact in the bid.
4. Bid or proposal's nonconformance to law or the requirements of the bid specifications.
5. Failure to use or properly complete the bid/proposal form furnished by the City of Seguin.
6. Lack of signature by an authorized representative on the proposal form.
7. Alteration of bid form.
8. Evidence of collusion among proposers.
9. Omission of proposal guarantee (if required).
10. In the event that a bidder is, or subsequently becomes, delinquent in the payment of his, her or its City taxes, including state and local sales taxes, or any other City financial obligation, such fact shall constitute grounds for rejection of the bid, or if awarded the bid, for cancellation of the contract.

11. AWARD

A. The City reserves the right to award a bid or contract to the lowest responsible bidder or to the bidder who provides goods or services at the "best value" for the City. Factors to be

GENERAL CONDITIONS OF BIDDING

considered in the evaluation of the bids are price, quality, reputation and experience of Bidder, past relationship with City, long term cost, safety record, operating history of equipment, conformance to specifications, delivery, and other factors as deemed appropriate by the Purchaser.

- B.** The City reserves the right to reject or accept all or any combination of bids deemed advantageous to the City.
- C.** The City reserves the right to reject or accept all or any combination of base bid plus alternative bids when alternate bids are called for in bid documents, subject to available funding.
- D.** Contractor is an independent contractor. Award of a contract does not create a joint venture between the Contractor and the City.

12. CONTRACT

- A.** City's Bid Documents combined with the Vendor's response (bid or proposal) submitted to and accepted by the City, constitutes a contract between the City of Seguin and the selected vendor at the time the Seguin City Council awards the contract to such vendor.
- B.** No further documentation is required, although the contracting parties may supplement the contract with further documentation. By submitting a bid or proposal, the vendor agrees to comply with the Terms and Conditions and other requirements set forth in the Bid Documents and to be further bound to the representations and information the vendor provides in the response.
- C.** Acceptance of bidder's offer may be in the form of a "Notice of Award", a Purchase Order (P.O.) or a "Contract".

13. RESERVATIONS

THE CITY EXPRESSLY RESERVES THE RIGHT TO ACCEPT, REJECT OR CANCEL ANY AND ALL BIDS and:

- A.** Waive any defect, irregularity, or informality in any bid or bidding procedure;
- B.** Reissue a bid invitation or proposal;
- C.** Procure any item by other allowable means;
- D.** Waive minor deviations from the specifications when a bid meets the intent of the specifications and consider such bid if it is determined the bid's total cost is lower, the purpose for the bid is improved or not impaired, the bid amounts to the best value for the City, and/or the waiver otherwise results in a measurable benefit on behalf of the City.
- E.** Extend any contract when most advantageous to the City as provided by original contract conditions.

14. WARRANTIES

- A. WARRANTY FOR PRODUCT:** The Contractor warrants to the City that all goods delivered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, will be of merchantable quality, good workmanship, free from defects, and fit for all purposes specified in this contract. The Contractor shall not Limit or exclude any implied warranties, and any attempt to do so shall render this contract voidable at the option of the City. The Contractor will

GENERAL CONDITIONS OF BIDDING

provide copies of applicable warranties or guarantees to the Purchasing Manager. The City may return goods not meeting applicable warranties to the Contractor at the Contractor's expense.

B. WARRANTY FOR PRICE: The City will pay the price for goods specified by the Contractor's bid. The Contractor warrants its price to be no higher than the Contractor's current prices or charges on orders by others for products or services of the kind and specification covered by this bid contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty, the prices or charges shall be reduced to Contractor's current prices or charges on orders by others, or in the alternative, City may cancel this contract without liability to Contractor for breach or Contractor's actual expense.

C. SAFETY WARRANTY: Contractor warrants that the goods sold to the City conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) as amended. In the event the goods do not so conform, the Contractor must correct or replace the goods at the Contractor's expense. If the Contractor fails to do so within a reasonable time, the City, at its discretion, may cause the correction to be made at the Contractor's expense, or may return the goods at the Contractor's expense and terminate this contract.

15. PROTESTS

A. The City Council is the final authority on issues relating to this contract. The Purchasing Manager is the City's representative in the award and administration of this contract, and will issue and receive all documents, notices, and correspondence.

B. Any protest to the City's consideration of any bid must be submitted in writing and delivered to the City of Seguin, ATTN: Purchasing Manager.

C. The protest may be delivered in person to the Purchasing office located at 211 North River, Seguin, Texas, or by certified mail, return receipt requested, to the following address: City of Seguin, Purchasing Department, ATTN: Purchasing Manager, PO Box 591, Seguin, Texas 78156-0591.

D. The written protest must include the following information before it may be considered by the City:

1. Name, mailing address, and business phone number of the protesting party;
2. Identification of the bid or proposal being protested;
3. A precise and concise statement of the reason/reasons for the protest which should provide enough factual information to enable the City to determine the basis of the protest;
4. Any documentation or other evidence supporting the protest.

E. The Purchasing Department, in conjunction with the department responsible for the bid or proposal solicitation, will attempt to resolve the protest, including, at the City's option, meeting with the protesting party. If the protest is successfully resolved by mutual agreement, written verification of the resolution of each ground addressed in the protest will be provided to the City Manager. If the Purchasing Department is unable to resolve the protest, the protesting party may request the protest be reviewed and resolved by the City Manager.

F. A request for the City Manager's review must be in writing and received by the Purchasing Department within three (3) business days from the date the Purchasing Department informs the protesting party the protest cannot be resolved. The request for review must be delivered in person

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to the Purchasing Department at the address stated above or by certified mail, return receipt requested, to the mailing address stated above. If the protesting party fails or refuses to request a review by the City Manager within the three (3) days, the protest is deemed finalized and no further review by the City is required. Applicable documentation and other information applying to the protest may be submitted by the protesting party to the Purchasing Department before review by the City Manager. If the protesting party requests a review by the City Manager, such documentation will be forwarded to the City Manager for consideration. The City Manager may likewise notify the protesting party or any City department to provide additional information.

G. The decision reached by the City Manager will be final, but the protesting party may still appear before the City Council during the hearing of citizens' session.

16. SHIPMENT & DELIVERY

A. Bidder is to quote its lowest and best price F.O.B. Destination on each item to shipping location in Seguin, Texas unless otherwise specified in the bid documents. Pricing shall include packaging, transportation, unloading, and any trade and cash discounts, which may be taken if earned.

B. The bidder certifies all materials, parts, and equipment supplied or represented in response to this bid shall be new and unused unless noted elsewhere in the bid documents.

C. The title and risk of loss of the goods will not pass to the City until receipt and acceptance takes place at the FOB point. The City department receiving deliveries or issuing purchase orders under this contract will inspect and accept any and all deliveries made and may reject those items which are damaged or which do not conform to the specifications. The Contractor is responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries at no additional cost.

D. Delivery dates pertaining to this specification must be clearly stated in the bid form where required. The bidder will clearly state in the bid the time required for delivery upon receipt of contract or purchase order. Failure to specify delivery date or state unrealistically short or long delivery dates may cause the bid to be disqualified. Proposed delivery time must be specific and such phrases "as required", "as soon as possible", or "prompt" may result in disqualification of the bid.

E. Vendor must keep the City advised as to the status of the delivery. When delivery delay can be foreseen, the Vendor shall give prior notice to the City.

F. Default in promised delivery, without acceptable reasons, or failure to meet specifications without remedy shall cause the City to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting vendor. This does not limit any other remedies to the City for damage entitled under the Uniform Commercial Code.

17. REJECTIONS

A. Delivered articles not in accordance with samples and specifications must be removed by the bidder at his expense. All disputes concerning quality of supplies delivered under this proposal will be determined by the City's Purchasing Manager or his/her designated representative.

B. All articles enumerated in the proposal shall be subject to inspection or delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the

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department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be reported to the Purchasing Manager who shall have the right to reject the whole or any part of the same.

18. PAYMENTS

A. Payment of invoices by the City shall be made thirty (30) days after receipt and acceptance of all equipment or performance of services covered by each purchase order or following the receipt of an accurate invoice, whichever is later, in compliance with state statute. Bidder shall state his bid in accordance with the standard payment terms and conditions of the City of Seguin of Net 30 days. All bids must be stated in terms of dollars and cents, the bidder's lowest, best, and final price.

B. Invoices submitted or otherwise used pursuant to the bid awarded under this IFB shall be presented to the City in the following form and content:

1. Each invoice must reference the City of Seguin contract, agreement, or P.O. number;
2. Only one contract, agreement, or project shall be billed on a particular invoice;
3. Each invoice must have a billing or invoice number and an Invoice Total.

C. The invoice requirements stated herein shall not be read to disallow or exclude other information that may be otherwise required or requested by the City. Such information required herein must be submitted only on an invoice and not in any other non-invoice form or document.

19. ASSIGNMENT

No right or interest in the contract shall be assigned, nor delegation of any obligation made by Vendor without the written permission of the City. Any attempted assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

20. WAIVER

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

21. FORCE MAJEURE

In the event that the performance by either party of any of its obligations under this contract is interrupted or delayed by events reasonably outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

22. GRATUITIES

The City may, by written notice to the Vendor, cancel this contract without liability to the City if it is determined by the City that gratuities have been offered to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations in respect to the performance of such a contract. In the event City, as set forth in this paragraph, cancels this contract the City shall be entitled to recover from the Vendor all additional costs incurred by City as a result of the cancellation.

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23. TERMINATION

A. DEFAULT: Failure by either party to perform any of its provisions will constitute a default and breach of contract, in which case, the other party may require corrective action within 10 days from the date the defaulting party receives written notice citing the nature of the breach. Failure of the defaulting party to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed 10 days will authorize the other party to terminate this agreement by written notice.

B. CONVENIENCE: The City reserves the right to terminate this contract upon 30 days written notice for any reason deemed by the City Council to serve the public interest. Termination for convenience will not be made when termination is authorized under any other provisions of this contract. In the event of such termination the City will pay the Contractor those costs directly attributable to supplies obtained in compliance with the contract prior to termination. Provided, however, that no costs will be paid to the Contractor which are recoverable in the normal course of doing business. The City is not liable for loss of any profits anticipated to be made hereunder.

C. FUNDING: The City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

D. FUNDING OUT: The State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Should, during the term of this contract, funds be withdrawn by the funding authority, a Force Majeur shall be deemed to exist, and this contract may be terminated without penalty or recourse by either party.

24. ENTIRETY OF AGREEMENT/AMENDMENTS

This and the other documents in the bid package represent the entire agreement between the parties relating to the subject matter of this contract. Any prior agreements, promises, negotiations, or representations between the parties are not binding unless included in this contract. All amendments to this contract must be in writing and executed by both parties.

25. SEVERABILITY

In case any one or more of the provisions contained in this contract is held to be invalid or unenforceable in any respect by a court of proper jurisdiction, the invalidity, illegality or unenforceability will not affect any other provision of this contract, and this contract will be construed as if the invalid or unenforceable provision was not contained herein.

26. INSURANCE

If required, specific insurance provisions will be included in bid specifications. An original, certified copy of an insurance certificate must be submitted within ten days from request. The successful vendor will be required to maintain, at all times during performance of the contract, the insurance detailed in bid specifications. Failure to provide this document may result in disqualification of bid.

27. INDEMNITY

THE VENDOR WILL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND ITS EMPLOYEES, AGENTS, OFFICERS AND SERVANTS FROM ANY AND ALL LAWSUITS, CLAIMS, DEMANDS AND CAUSES

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OF ACTION OF ANY KIND ARISING FROM THE NEGLIGENT OR INTENTIONAL ACTS ERRORS OR OMISSIONS OF THE VENDOR, ITS OFFICERS, EMPLOYEES OR AGENTS. THIS WILL INCLUDE, BUT NOT BE LIMITED TO, THE AMOUNTS OF JUDGMENTS, PENALTIES, INTEREST, COURT COSTS, REASONABLE LEGAL FEES, AND ALL OTHER EXPENSES INCURRED BY THE CITY ARISING IN FAVOR OF ANY PARTY, INCLUDING THE AMOUNTS OF ANY DAMAGES OR AWARDS RESULTING FROM CLAIMS DEMANDS AND CAUSES OF ACTION FOR PERSONAL INJURIES, DEATH OR DAMAGES TO PROPERTY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, AND TRADEMARKS AND WITHOUT LIMITATION BY ENUMERATION, ALL OTHER CLAIMS, DEMANDS, OR CAUSES OF ACTION OF EVERY CHARACTER OCCURRING, RESULTING, OR ARISING FROM ANY NEGLIGENT OR INTENTIONAL WRONGFUL ACT, ERROR OR OMISSION OF THE VENDOR OR ITS AGENTS OR EMPLOYEES. THIS OBLIGATION BY THE VENDOR WILL NOT BE LIMITED BY REASON OF THE SPECIFICATION OF ANY PARTICULAR INSURANCE COVERAGE REQUIRED UNDER THIS AGREEMENT.

28. PATENTS

The bidder agrees to indemnify and save harmless the City, the Purchasing Manager, and his/her assistants from all suits and actions of every nature and description brought against it or any of them, for or on account of the use of patented appliances, products or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted, upon request of the Purchasing Manager, as a necessary requirement in connection with the final estimate for payment in which such patented appliances, products or processes are used.

29. CONFIDENTIALITY

The City of Seguin is governed by the Public Information Act ("The Act"), Chapter 552 of the Texas Government Code. All information submitted by prospective bidders during the bidding process is subject to release under The Act. On each page where proprietary information appears, information considered confidential must be labeled. Failure to so label the proprietary or confidential information shall be considered as a waiver of any confidentiality rights or interests. Disclosure of requested information will be determined in accordance with the Texas Public Information Act. You are not encouraged to submit such data and information unless it is absolutely required to understand and evaluate your response. If such data and information is submitted, you agree that the City shall not be liable for disclosure of such data and information and hereby release the City from any liability. In the event a request for public information is filed with the City which involves information labeled as confidential, you will be notified by the City of the request so that you will have an opportunity to contact the Attorney General as to why such information should not be released.

30. ANTI-LOBBYING PROVISION

Bidders are prohibited from directly or indirectly communicating with City Council members regarding the Bidder's qualifications or any other matter related to the eventual award of a contract for the services requested under this Invitation for Bids. Bidders are prohibited from contacting City staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the Bidder from the selection process.

Upon issuance of the Invitation for Bids, all bidder communications and requests for clarification or objections shall be directed in writing to the Purchasing Manager for response, determination and dissemination to all bidders. Any communication by bidders or their representatives toward other city officers or employees regarding this Invitation for Bids or the award of a contract are prohibited

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and will constitute grounds for disqualification of a proponent. A lobbyist or a proponent or any of their agents may not do any act or refrain from any act for the express purpose and intent of placing any City official under personal obligation to the lobbyist or proponent.

31. CONFLICT OF INTEREST

A person or vendor seeking to contract with the City must file a Conflict of Interest Questionnaire (CIQ) if the person has a business relationship with the City, and either: has a business relationship with a city official or a city official's family member; or has given a gift worth more than \$250 to a city official or city official's family member within the previous 12-month period. A vendor required to file a CIQ must do so with the City's Purchasing Manager within seven business days of: (1) beginning contract discussions with the city; (2) submitting to the City an application, response to a request for proposals or bid; or (3) learning of the existence of the applicable business relationship. Vendors should see Texas Local Government Code Chapter 176 in an effort to determine its applicability. The conflict of interest questionnaire form is included herein and is available from the Texas Ethics Commission at www.ethics.state.tx.us.

32. CERTIFICATE OF INTERESTED PARTIES

Texas Government Code, Sections 2252.908 requires a business entity to submit a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity following the guidelines prescribed by the Texas Ethics Commission at www.ethics.state.tx.us. The law applies to contracts that require an action or vote by the governing body of the governmental entity before the contract is signed. The Form 1295 is included herein. The completed Form 1295 must be submitted electronically by the business entity to the state. A copy of the certified Form 1295 including the certification number generated by the state must be provided to the City of Seguin at the time a bid or proposal is submitted. Information on the Form 1295 may be considered by the City during bid evaluation and award. The City will only officially acknowledge the Form 1295 submitted by the awarded vendor which will cause it to be publicly posted on the Texas Ethics Commission website.

33. ANTI-DISCRIMINATION IN EMPLOYMENT

The Bidder, if permitted, certifies complete compliance with the Federal Civil Rights Law and the American with Disabilities Act, agreeing to non-discrimination based on race, age, color, religion, disability, gender, ancestry, national origin, or place of birth in employment practices, programs and services 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 compensation; and selection for training, including apprenticeship.

34. COMPLIANCE WITH FEDERAL WAGE AND TAX LAWS

The Bidder shall comply with all Federal, State and local laws and ordinances relating to Social Security, Unemployment Insurance, Income Tax Withholding, Workers' Compensation, pensions and similar matters.

35. LOCAL VENDOR PREFERENCE POLICY

Texas Local Government Code, Sections 271.905(a) and 271.9051 allow the City to consider a vendor's principal place of business in awarding certain contracts by way of competitive bids. This consideration is in effect to promote economic development opportunities through the contract by employing local residents and increasing tax revenue. The City of Seguin applies a local vendor

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preference to bids in compliance with state statute.

36. ANTI ISRAEL CERTIFICATION

In compliance with Texas legislature HB 89, by bidding on or accepting an order to provide goods or services to the City of Seguin, the vendor /supplier certifies that the company does not boycott Israel and will not do so at any time while doing business with the City of Seguin.

37. ENERGY BOYCOTT PROHIBITED

In compliance with Texas legislature **S.B. 13 (Birdwell/P. King) – Energy Boycott**: among other things, prohibits a city from entering into a contract with a value of \$100,000 or more that is to be paid from public funds with a company with more than 10 full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

38. FIREARMS

In compliance with Texas legislature **S.B. 19 (Schwertner/Capriglione) – Firearms**: among other things, (1) prohibits a governmental entity from entering into a contract with a value of \$100,000 or more that is to be paid from public funds with a company with more than 10 full-time employees for the purchase of goods or services unless the contract contains a written verification from the company that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and (2) provides that the prohibition in (1) does not apply to a city that (a) contracts with a sole-source provider, or (b) the city does not receive any bids from a company that is able to provide the required verification required by (1)

39. NOTICES

All notices called for or required by this agreement will be addressed to Purchasing Manager, City of Seguin, 205 N. River Street, Seguin, Texas 78155, or such other party or address as either party designates in writing, by certified mail, postage pre-paid, or by hand delivery, and will be effective five days after mailing.

40. STATE AND FEDERAL FUNDED PROCUREMENTS

The City of Seguin follows State of Texas and Federal 2 CFR 200.318-326 and Appendix II to Part 200 procurement law and guidance in the purchasing and contract management of goods and services funded by state and/or federal funds. Additional policy guidance is contained in the City of Seguin Purchasing Policy which addresses the City's requirements pertaining to the procurement and expenditure of local, state and federal funds.

41. QUESTIONS

Questions regarding interpretation of specifications, bids, bid results or bid awards should be directed in writing to the Buyer indicated in the General and/or Technical Specifications or to the Purchasing Manager, ABruns@SeguinTexas.gov and be referenced by bid number and bid title.