

Purchasing Policy City of Edgewater, Florida



May 5, 2025 Resolution

No. 2025-R-10

FOREWORD

The Finance Department prepared this "Purchasing Manual" to serve as the basis for purchasing policies and procedures for the City of Edgewater.

The City Council of Edgewater, Florida, recognizes that some centralized purchasing is a necessary function of effective government and declares it shall be the responsibility of the Finance Department Director to consider opportunities to centralize some purchases of supplies, equipment, and services for various functions within the City.

The purchasing function involves the procurement of materials, supplies, equipment, and services at best value, consistent with the quality needed to meet the required standards established and approved by the Edgewater City Council. Our goal is the promotion of the best interest of the City of Edgewater through intelligent action and fair dealings, resulting in obtaining maximum savings for the City.

Rules and regulations are necessary for the proper operation of the purchasing function and it is essential all who are involved in the purchasing operation be well informed. This manual was developed to aid all employees, volunteers and Board Trustees directly or indirectly associated with the function of purchasing.

All City Departments and Boards shall comply with this Purchasing Policy. Florida Statutes will prevail for all Items not expressly covered within this Purchasing Policy. All individuals required to submit a statement of financial interest with the Supervisor of Elections will do so in accordance with the requirements of the State of Florida.

The objectives of the Finance Department are as follows:

1. To deal fairly and equitably with all vendors wishing to do business with the City of Edgewater.
2. Provide professional procurement services for all our customers within the City.
3. Assure adherence to all laws, regulations, and procedures related to City procurement.
4. Maximize competition for all procurements of the City.
5. Obtain maximum savings through innovative buying and application of value analysis techniques.
6. Purchase goods and services at the best value if not lowest price, consistent with quality performance, and delivery requirements from capable vendors meeting the City's requirements.

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CODE OF ETHICS

The Finance Department of the City of Edgewater embraces and subscribes to the professional standards of the Code of Ethics of the National Institute for Governmental Purchasing.

Those professional standards are:

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

The NIGP Global Best Practices for Ethical Procurement are hereby incorporated by reference (Exhibit "A")

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SECTION I REQUISITION

PURPOSE: The City of Edgewater currently utilizes the Central Square - Naviline purchasing and inventory module for on-line processing. Approved requisitions signify authority to charge a specific fund and cost center, and signify that the department has verified there are sufficient funds for the purchase.

DEFINITION: A requisition is a written or computerized request to the Finance Department for the procurement of goods or services from suppliers.

PURCHASING RESPONSIBILITIES:

1. To become acquainted with the needs of our customers by utilizing purchasing teams made up of department and Finance Department personnel.
2. To aid and cooperate with all departments in meeting their needs for operating supplies and equipment at the best value and least cost to the City of Edgewater.
3. To assist in the preparation or review of specifications for all requirements.
4. To locate the sources and availability of needed products.
5. To process all requisitions and purchases with the least possible delay, in accordance with City procedures.
6. To work with the supplier in correlating all the steps involved in completing a purchase, including purchase order follow-up and tracing.
7. To assist the department with any difficulty after the product has been delivered or service rendered.
8. To notify the user department of any changes in the use of the suggested vendor as proposed by the user department, and any other probable changes such as price or delivery.

DEPARTMENT RESPONSIBILITIES:

1. Allow sufficient time for the Finance Department to process and/or place the order and for the supplier to deliver.
2. Advise the Finance Department if the requisition is a defined emergency as stated in Section III.
3. Write clear and accurate description of materials and equipment to be purchased and its intended purpose. Specifications should be typed and either emailed or hand carried to the Finance Department.
4. Prepare generic specifications for items requiring a technical or engineering background.
5. List anticipated requirements in advance, when possible. Involve the Finance Department at the time the need is determined or as early as possible.
6. Keep the Finance Department advised of any abnormal demands. PLAN AHEAD!
7. Under no circumstances is the City of Edgewater to be obligated by departments in any manner whatsoever without prior approval.
8. Cooperate with the Finance Department by reporting, in writing, the results of purchases -- either favorable or unfavorable. If you have complaints, REPORT THEM.
9. Advise the Finance Department of any known supplier(s).
10. List any quotes obtained by vendor name, individual contacted, and price obtained (by line item). Check with the Finance Department for additional sources.
11. Verify that all sources of funds identified on the requisition are properly coded.
12. Specify correct commodity code of items to be purchased.

13. Be sure funds are allocated and available in the referenced fund/account to support purchases.
14. Be sure the purchase is for a "public purpose", unless specifically exempted by City rules or regulations.

WHEN PREPARED: Purchase Requisitions must be submitted to Finance, far enough in advance to permit the Finance Department to verify competitive prices and to allow sufficient time for deliveries to be made. User Departments should take into account the time necessary to obtain Council award approval and administrative approvals in planning for their procurements. The Finance Department can assist you with this planning.

SPECIAL SITUATIONS: Agencies should identify requisitions requiring special handling for the purchase of materials to prevent downtime but which are not strictly emergencies. These must be held to a minimum. These should only be used in cases of required purchases with a justification as to the urgent need. Competitive verbal pricing should be obtained wherever possible.

WHO PREPARES: All requisitions shall be authorized by the Department Director or designated authority. Requisitions should originate in the department at the level where the purchase is to be used and routed to the designated approval authority prior to being sent to Finance Department. Requisitions not properly authorized will not be accepted by the on-line system.

ROUTING:

1. For all purchases under \$50,000, the requisitioning agency will enter the requisition into the on-line system for issuance of a purchase order. The Department will obtain quotes as:
 - a. Quotes are strongly encouraged, but not required under \$10,000
Preference may be given to local suppliers (up to 3%)
 - b. Three informal quotes \$10,000 - \$24,999
 - c. Three formal quotes \$25,000- \$49,999
2. For all purchases \$50,000 or greater, the requisitioning Department will request a formal solicitation to be issued by the Finance Department, and then assure that City Council approval is obtained for award, either of the solicitation or other Council direction.
3. Upon receipt of the requisition in the Finance Department and dependent on the dollar amount, formal quotations, bids or proposals will be solicited. A purchase order or a contract will be issued upon completion of this process.
4. If the requisition is incomplete or not properly prepared, the Finance Department will notify the originating department.
5. For all purchases of capital goods or services, regardless of the dollar amount, the requisitioning Department will enter the requisition into the system assuring appropriate approvals are obtained, unless approved by the Finance Director and under \$25,000.

REVIEW OF SPECIFICATIONS-OTHER DEPARTMENTAL APPROVALS REQUIRED: Prior to issuance of bids or the processing of a requisition with specifications included, review of the items to be purchased and the specifications for certain commodities and services must be made by other departments within the City to assure open competitive bidding, compatibility, standardization, and up-to-date specifications. The following are mandated reviews:

TYPE OF EQUIPMENT/SERVICE REQUESTED D E P A R T M E N T R E V I E W

Information Technology Equipment	Information Technology
Vehicles/Heavy Equipment	Fleet Maintenance
Telephone Systems (Internal System Only)	Information Technology

PLEASE ENSURE THE ABOVE APPROVALS ARE OBTAINED PRIOR TO SUBMITTAL TO THE FINANCE DEPARTMENT.

SECTION II PURCHASE ORDERS

PURPOSE: A purchase order authorizes the vendor to ship and invoice the materials and services as specified. Purchase orders will be written to be clear, concise and complete, preventing any misunderstanding and/or unnecessary correspondence with suppliers.

DEFINITION: A legally binding document prepared by a purchaser to describe all terms and conditions of a purchase.

WHEN ISSUED: Pre-numbered computer-generated purchase orders will be issued upon receipt of a properly authorized requisition, after receipt of competitive bids, determination whether funds are available, and Council approval as necessary. No purchase orders will be issued after the fact unless it is a documented emergency situation.

WHO ISSUES: Only the Finance Department shall issue purchase orders. The department will not enter into negotiations with any supplier for the purchase of supplies, services, materials or equipment. The Finance Department will transmit all purchase orders to the requesting department.

ROUTING OF ORDER: A standard purchase order form is used to make all purchases. Purchases over \$5,000 require a copy of the purchase order to be provided to the vendor. The purchase order form for purchases under \$5,000 is sent to the vendor upon request by department.

FOLLOW-UP AND TRACING: Departments should track order progress after placing the order. If a problem is incurred, the department should then contact the Finance Department for assistance.

DIFFICULTIES AFTER RECEIPT OF SERVICE OR ITEM: Upon request from the department, the Finance Department shall handle with the vendor any problems or difficulties with outstanding orders or contracts and received items or services. See Section XIV of this manual for further details.

PRE-PAYMENT PROCEDURES: On those items where prepayment is needed, the original documents showing that pre-payment is required will be forwarded to the Finance Department as the authorization to issue a check with a manual check request. These should be kept to a minimum. The purchasing card should be used for items that require pre-payment if under \$5,000.

REGISTRATION FEES AND TRAVEL: Registration fees and travel for seminars and conferences for in-City and out-of-City travel are handled via Travel Authorization forms as per City Policy and Procedures. These requests are processed through the Finance Department.

UTILITY BILLS AND COMMUNICATION INVOICES: Payment for utilities (water, sewer, lights, etc.) and communication service will be made by the Finance Department and the expense allocated to the appropriate department fund.

EMPLOYEE TESTING;

Pre-employment or other such employee testing as required will be processed by the Human Resources Department and the expenses allocated to the appropriate department fund.

DEBT SERVICES;

All debt service payments will be paid by the Finance Department and the expenses allocated to the appropriate department fund.

PURCHASE OF GOODS AND SERVICES \$50,000 or Greater: All purchases of goods and services whose **cumulative total** shall exceed \$50,000 or greater within a 12-month period will be competitively bid.

USE OF FIELD PURCHASE ORDERS: The Field Purchase Order should be used as a payment tool/check request for all items under \$5,000. Common uses include: Subscriptions, Memberships, Advertisement and Registrations requiring a check, Petty Cash Reimbursements and Employee Travel Reimbursement checks. Also, the Field Purchase orders should be used for items under \$5,000 for vendors that do not accept the Purchasing Card.

Invoices that are attached to FPO's shall be stamped, signed and forwarded to Accounts Payable as per Section XXII. Approvals will be tracked by the financial software.

SECTION III SOLICITATION AND APPROVAL LEVEL THRESHOLDS

PURPOSE: To describe the various levels of the competitive process and to identify the levels of authority in the procurement function of the City. The procurement function is designed to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

Threshold Levels:

Informal quotes	-	\$10,000 - \$24,999
Written quotes	-	\$25,000 - \$49,999
Formal Solicitation	-	\$50,000 or greater - within a twelve-month period

Even though quotes are not required for every threshold level, every effort will be made to obtain a minimum of 3 quotes / solicitations for each threshold level. In addition, every effort will be made to obtain quotes / solicitations from local suppliers.

Department/Division shall maintain documentation with their requisition on all quotes received or as to why competition was not obtained. All purchase prices must be considered fair and reasonable. Award (non-competitive) shall be made to the business offering the lowest quotation that is determined to be both responsive and responsible. Award based on the overall best value can be made if the department submits a statement to the Finance Department for approval describing the benefits to the City if award is made to other than low. The name of the business submitting a quotation, and the date and amount of each quotation, shall be recorded and maintained as public record.

Types of formal solicitations used for competitive procurement are as follows:

Request for Proposals (RFP) – A solicitation for response for a commodity and/or services for which the scope of work, specifications or contractual terms and conditions cannot reasonably be closely defined. Evaluation of a proposal is based on prior established criteria wherein the RFP shall state the relative importance of price and other evaluation factors.

Invitations to Bids (ITB) - A solicitation inviting potential contractors or vendors to submit sealed, written pricing for specific goods or services in conformance with specifications, terms, conditions and other requirements described in the bid invitation documents.

Request for Information (RFI) - A solicitation for response from interested and prospective vendors/contractors to provide information to determine specifications, qualifications and/or capabilities to satisfy a need rather than a firm specification and in which the respondent may be given latitude in order to develop a product and/or service which will fulfill the need.

Request for Qualification (RFQ) - A solicitation seeking responses for services for which the competitive award will be based on the qualifications of those responding; generally, but not limited to, used in procuring certain professional services, design build services, consulting and construction management services.

The procurement of all goods, material, equipment, services and combinations of goods and/or services by or on behalf of the Council, including those transactions through which the Council shall receive revenue, in an amount equal to or in excess of the mandatory bid amount of \$50,000 within a twelve month period, shall be formally competitively awarded based on the submission of bids (ITBs), proposals submitted in response to an request for proposal (RFP), proposals submitted in response to a request for information (RFI), proposals submitted in response to a request for qualifications (RFQ) or proposals submitted for competitive negotiations, except as otherwise provided herein, or by State or Federal law. Competitive bidding shall be the preferred method of procurement. If a department determines the use of an invitation to bid is not practicable based on 1) lack of time, 2) the award will be made on factors other than price and price-related factors, 3) a need to conduct discussions with the responding bidders about their bid and 4) there isn't a reasonable chance of receiving more than one quote, must submit, in writing, a statement requesting solicitation by Request for Proposals.

Departmental requirements are not to be split to avoid the competitive bidding thresholds. It is in the best interest of the City to combine requirements and competitively bid these requirements to ensure a fair and reasonable price.

All Department Directors or their designee shall have the authority to authorize purchases of goods and services not to exceed \$10,000 without any quotes. Authority is also given in case of an emergency for purchases under \$50,000 when at least one vendor has been contacted and the purchase order is issued through the Finance Department within the next business day. The Finance Department will review the requisition to ensure a fair and reasonable price is received.

The City Manager or designee shall have the authority to award and execute purchases of goods and services not to exceed \$50,000 including change orders and amendments. The City Manager or designee is authorized to renew options on approved contracts, as long as it is per the terms, conditions and renewal period specified in the original contract and the total dollar amount for each contract or purchase order is within the Council approved budget. All purchases of goods and services, in excess of \$50,000 shall be awarded by the Council, except as otherwise provided within this section. The City Manager or designee shall have the authority to approve all purchase orders, contracts, and

Master Agreements up to \$50,000 for projects, goods and services that are detailed in the adopted budget as long as award is to the lowest responsive, responsible bidder in a competitive environment.

The City Manager or designee shall have the authority to approve and execute all change orders and amendments and to approve price escalation/de-escalation changes, according to the terms of the particular contract providing that the change does not exceed 10% (not to exceed \$50,000 in total) of the latest approved contract value for contracts. Amendments to contracts greater than these amounts must be approved by City Council.

The City Manager or designee shall have authority to award and execute purchase orders in any amount on current City cooperative purchasing agreements and contracts from GSA contracts, state agencies, or other units of government and non-profit organizations on capital items and projects that have been detailed and approved by City Council in the adopted budget or amended budget. The City may piggyback on active current agreements and contracts from other governmental entities when competitive bid procedures have been followed and the guidelines utilized by that entity are the same or more stringent than the City's guidelines. All conditions of the agreement or contract must be met. The City may piggyback on previous City bids provided they were received within the previous 12 months and the department is not aware of any interest from other potential vendors.

The City Manager or designee shall have the authority to settle individual claims under contract provided the settlement does not exceed ten percent 10% (not to exceed \$50,000) of the latest approved contract value for contracts. All change orders issued which modify a contract, the original and revised total cost of which exceeds ten percent 10% (not to exceed \$50,000), shall require Council approval, unless otherwise specified herein.

It shall be prohibited for any City employee to order the purchase of any goods or services or make any contract change without the delegation of authority under this section other than through the Finance Department, unless utilizing an authorized procurement card. City employees will be held accountable for unauthorized purchases and appropriate disciplinary action will be taken pursuant to the City Policy and Procedures Manual. The Department committing the unauthorized purchase will document the incident with a memo to the City Manager explaining the details of the unauthorized purchase. These details must include a brief summary of what happened and the corrective action that the Director has taken to prevent unauthorized purchases in the future. The memo shall state any disciplinary action taken, if any, and request the City Manager approve the unauthorized purchase if under \$50,000. Unauthorized purchases of \$50,000 and greater shall be submitted to the Council for approval. Any purchase or contract made contrary to this section hereof shall not be binding on the City unless approved by the Council.

In the purchase of, or contract for, goods or contractual services, the City may give a preference of 3% percent of the bid price to local suppliers; provided, however, that this section in no way prohibits the right of the City Council to recommend award to the vendor that is the best interest of the City. The goods or services must be equal to or greater than the lowest responsive bidder. Local Preference shall only be given if not prohibited by any agreement and or grants associated with this award.

Local is defined as a business holding a City of Edgewater Business Tax Receipt (BTR) and Certificate of Use (CU).

The City Council has the right to award all contracts except as otherwise provided in the Code of Ordinances of the City. As to those contracts which the Council retains the right of award, the Council shall have authority to review, modify or set aside all previous administrative determinations, whether appealed or not, made in the course of the procurement.

SECTION IV EMERGENCY PURCHASES

PURPOSE: It is recognized that situations arise where formal solicitation is not possible. In order to expedite the provision of goods and services, the following procedure will be followed.

DEFINITION: Emergency purchases include those supplies or services necessary because of certain emergency conditions occurring affecting the health, safety and welfare of the City and its citizens or in the event that the City may suffer a financial loss due to inaction. Poor planning will not constitute an emergency.

AUTHORIZATION: Emergency purchases are approved per the spending authority levels outlined in this Policy and subject to review by the Finance Director. The City Manager may approve those exceeding \$50,000 and return to the Council for confirmation of the purchase, unless an executive order has been issued that suspends all requirements during disaster related events.

PROCEDURE: When an emergency exists, a requisition will be entered outlining the nature of the emergency and coded as such. In addition, the department should call the Finance Department to alert them to the need. A purchase order will be issued upon proper approval and processing of the requisition. The Finance Department may obtain additional price quotes prior to issuing a purchase order number. Standing procedures for emergency purchases are included in the emergency management plan.

EMERGENCY PURCHASES - NIGHTS, WEEKENDS, OR HOLIDAYS: If an emergency occurs when the Finance Department is closed, the Department Head shall act to secure the necessary materials or service. The evidence of purchase such as sales ticket, bill, delivery slip, counter receipt, etc., which the supplier normally furnishes, will be submitted concurrently with the requisition by the department to the Finance Department on the next work day following the date of purchase. Such back-up documents will be submitted to Finance. **Emergency Justification form must be forwarded to the Finance Department by the next business day.**

GENERAL INFORMATION: When emergency purchases are made, the department will make the purchase at the best possible price. A true emergency can occur as a result of parts and labor needed for repairs to vehicles or equipment, which must be kept in operating order. Emergencies due to negligence are to be avoided. **Failure to anticipate normal needs, project deadline dates or a desire to expend excess or remaining budgeted funds prior to year-end do not constitute an emergency.**

NOTE: Emergency purchases are costly and should be kept to a minimum. They are usually made hurriedly, on a non-competitive basis, and at top prices. Most vendors charge a premium when supplies must be obtained immediately.

SECTION V CHANGE ORDERS

PURPOSE: Certain conditions surrounding purchases may change in the course of a procurement, which necessitates a clarification or modification to the purchase order to fulfill legal requirements.

DEFINITION: A Change Order to a Purchase Order is an adjustment to funding source, addition or deletion of items, quantity, delivery time, or cost.

PROCEDURE: The department requesting the Change Order shall submit to the Finance Department a Change Order Request indicating the original Purchase Order Number and the reason for the changes. Change Order requests listing a price change with no explanation for the increase or decrease will be returned to the originator. The Finance Department will modify the on-line system to reflect the change. If required, the vendor will be sent a hard-copy purchase order reflecting the change.

Change Orders must be processed for all changes affecting the original purchase order such as quantity increases and those changes that increase 10% or more of the original unit price dollar value. Change orders will not be processed for decreases in the purchase order amount if payment is being finalized or if the decrease to the purchase order line-item amount is less than 10%. If a decrease occurs, the department will receive only the amount invoiced. The same procedure applies if the increase is less than 10% of the original purchase order dollar amount. No Change Orders to cancel an item will be processed until the Finance Department has verified that a check has not already been issued for the item.

Cancellations of all purchase orders at any dollar value will require a written change order to be emailed or faxed to contractor. Cancellations and Change Orders will be distributed in the same manner as the original purchase order.

Construction and Professional Services Change Orders will be processed manually using the Professional Service/Construction Change Order form. The Finance Department will make the necessary corrections to the on-line system once approvals are obtained.

SECTION VI BLANKET/INVERTED PURCHASE ORDERS

PURPOSE: Blanket/inverted purchase orders allow multiple transactions to be made over a specified period of time, a practice aimed at reducing the number of small orders, utilizing short-term releases to satisfy demand requirements, while creating efficiencies of effort and decreasing costs.

DEFINITION: A blanket order is a purchase order issued for the purchase of indeterminable miscellaneous items or materials, supplies, parts, etc., over a certain period of time (usually on an annual basis or as approved by the Edgewater City Council). Shipments are made, as requested by the department against the blanket order number for the term of the blanket purchase order. The blanket purchase order generally establishes a maximum dollar limit, the period covered, and terms and conditions. However, since the specific items to be purchased are unknown at the time of issuance of the blanket purchase order, no line-item pricing may be shown. Blanket orders may be used as a payment tool for formal contracts.

An inverted purchase order is used for payment on contracts where retainage is withheld from the invoices received. Inverted purchase orders use the dollar value of the contract as the quantity and receipts are issued against line items.

HOW PREPARED: Requests for a blanket/inverted purchase order shall be made on a Requisition by the using agency indicating the types of items to be purchased and total amount to be encumbered, either in quarterly increments or for the entire year.

Requests for Blanket purchase orders shall contain the following information:

1. Description and types of items to be purchased.

2. The period of time the order will remain valid.
3. The maximum dollar amount not to be exceeded. If it is apparent the amount will be exceeded, the department via a change order request must request an additional amount. Adequate funds must be available in the department budget.

HOW USED: After the blanket purchase order is issued, the department is authorized to place orders, via telephone or in person, directly with the vendor, when needed.

PROCEDURE: The person(s) listed as authorized by the blanket purchase order may request/place orders directly with the vendor as needed. Items may be picked up or delivered by the vendor. The Department Head or designee shall be responsible for receiving all items acquired using the on-line system.

HOW PAID: The Finance Department will process payment of invoices for received materials or services to obtain any discounts. User agencies must indicate receipt of all goods and services, on- line, in a timely manner. Any invoices received by the Department should be forwarded to the Finance Department after receipt processing.

HOW MONITORED: The Finance Department may actively monitor all or selected purchases or invoices to ensure adherence to City procedures. The Finance Department may cancel blanket purchase orders if misuse occurs.

SECTION VII QUOTATIONS AND BIDS

PURPOSE: Fair and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically.

DEFINITION: A request to suppliers to make offers to an organization.

PROCEDURE FOR SOLICITING QUOTES:

- Every effort should be made to obtain a minimum of three (3) quotations for each item or group of items required regardless of dollar amount.
- Competitive quotes are not required, but are strongly encouraged, on items, excluding services, under \$10,000 in value.
- Written, emailed or faxed quotes for purchases from \$10,000 to \$24,999 are to be obtained by the department and documentation maintained in the department file and the quote information entered into the on-line system. Finance Department may require a copy of the quote documentation. Services provided on-site require appropriate insurance. Please call the Finance Department for assistance. Capital outlay items may require other approvals prior to purchase. The department should contact Finance Department for assistance in creation of a vendor contact list.
- Purchases of \$25,000 but under \$50,000 will be made by formal written quotations issued by the requesting Department. The Finance Department may coordinate with the department.
- The City's bidding service provider will notify potential suppliers via fax or email of all solicitations exceeding \$50,000 in value. Formal Invitations to Bid will be distributed to prospective suppliers, as feasible, and such Invitations to Bid will indicate the deadline for

receipt of the bid. No bid will be considered if received after the deadline for receipt. Invitations to Bid, documented completely, shall be maintained with the purchase order.

PROCEDURE FOR SOLICITING BIDS:

The Finance Department shall request formal sealed bids on purchases exceeding, or expecting to exceed \$50,000 in a single year. **All advertisements and public notice time frames will be made in accordance with Florida Statutes.** The Finance Department shall solicit bids from responsible prospective suppliers obtained from our subscription notification service, publications and catalogues, suggestions from the user Department, previous suppliers, etc. The Finance Department shall attempt to secure at least three (3) bids.

A tabulation of all bids received with the recommended award(s) will be posted on the City's website and will be available for public inspection in the City Clerk's office during regular business hours for 72 hours after recommendation of award and in accordance with Florida Statutes.

Where requirements are of a technical nature, a multi-step bid process may be used. The conventional multi-step process calls for submission of technical proposals and bid prices at the same time, but in separate sealed envelopes. The proposals are opened and evaluated. The bid price envelopes are then opened for those proposals that are found to be responsive and responsible and award is made based on price alone.

The Finance Department's bidding notification service maintains a "Vendor List" of prospective suppliers via use of a subscription notification service.

A prospective bidder will be placed on the Vendor List by subscribing to the bidder notification service. Information is available in the Finance Department office about the subscription service.

RESPONSIBILITY FOR SPECIFICATIONS:

The preparation of specifications is the responsibility of the department with review (and authority to challenge) by the Finance Department. Specifications will permit competition except on non-competitive materials or services, (see "Purchases Not Requiring Bids").

At least fifteen (15) business days before the intended date of advertising, the requesting Department/Division shall initiate an intake request for bid/proposal/qualification including specifications/documentation in the E-Procurement portal for preparation of the solicitation document. This will allow time for review, verification and approval.

In general, specifications should define the level of performance required rather than specific brand name. For the benefit of vendors and the department, specifications must be clear and concise.

SPECIFICATIONS

(a) Maximum practicable competition. All specifications and statements of work used for formal competitive solicitations shall be drafted to promote overall economy for the purposes intended, to encourage competition in satisfying the city's needs, and shall not be unduly restrictive. This requirement shall apply to all specifications including, but not limited to, those prepared for the city by outside sources.

(b) Required characteristics. All specifications should include required characteristics for performance and design. To the extent practicable, and unless otherwise permitted by this Code, all specifications shall describe the city's requirements in a manner that does not unnecessarily exclude a material, service or construction item. All specifications and statements of work used for competitive solicitations are subject to the final approval of the Finance Director or designee.

The Finance Department reserves the right to challenge specifications to allow open competition.

ENGINEER'S ESTIMATES

An engineer's estimate is a prediction of quantities, cost, and/or price of resources required by the scope of an asset investment option, activity, or project. As a prediction, an estimate must address risks and uncertainties. Estimates are used primarily as inputs for budgeting, cost or value analysis, decision making in business, asset and project planning, or for project cost and schedule control processes. Cost estimates are determined using experience and calculating and forecasting the future cost of resources, methods, and management within a scheduled time frame. This work is accomplished by a licensed design professional typically engaged by the City for the project being competitively bid.

PROCEDURE FOR ISSUING DEBT:

Long-term debt may only be used for the costs of acquisition, construction or modification of capital facilities and for the refinancing or refunding of such debt. This limitation prohibits any debt being issued to finance operational costs of City departments.

The legal, economic, financial and market conditions associated with the issuance of debt are dynamic, unpredictable and usually in a constant mode of change. Consequently, the decision to issue debt is best made on a case-by-case basis and only after careful and timely analysis and evaluation of all relevant factors. Some of the factors that should be considered include, but are not limited to, the following:

- Current interest rates and other market considerations;
- The financial condition of the City;
- The types, availability and stability of revenues to be pledged for repayment of the debt;
- Type of debt to be issued; and
- The nature of the projects to be financed (i.e., approved schedule of improvements, non-recurring improvements, etc.).

Capital improvements related to enterprise fund operations (e.g., water systems, wastewater systems, refuse disposal systems, etc.) shall be financed solely by debt to be repaid from user fees and charges generated from the respective enterprise fund operations, when practicable.

Capital improvements not related to enterprise fund operations (e.g., roads, parks, public buildings, etc.) may be financed by debt to be repaid from available revenue sources (including ad valorem taxes) pledged for same, when practical.

All capital improvements financed through the issuance of debt shall be financed for a period not to exceed the useful life of the improvements, but in no event to exceed 30 years.

The City shall not construct or acquire a public facility if it is unable to adequately provide for the subsequent annual operation and maintenance costs of the facility.

The City shall at all times manage its debt and sustain its financial position in order to seek and maintain the highest credit rating possible.

In order to maintain a stable debt service burden, the City will attempt to issue debt that carries a fixed interest rate. However, it is recognized that certain circumstances may warrant the issuance of variable rate debt. In those instances, the City should attempt to stabilize debt service payments through the use

of an appropriate stabilization arrangement.

When refinancing current debt, the City will seek a savings (net of all issuance costs and any cash contributions to the refunding) as a percentage of the refunding debt of at least 3-5%.

Lease Finance Agreements utilized for competitively bid items shall require a minimum of three (3) quotations. Quotes are to be obtained by the Finance Director and shall be maintained in the department file.

BID INVITATIONS: Notice of Bid will be advertised and posted in City Hall and on the City Website. The City uses an Internet bidding service for document fulfillment purposes. They send notification of Bids to potential vendors via email, fax or mail, depending on the vendor's preference.

METHOD OF SOURCE SELECTION: The City uses the Competitive Sealed Proposals methodology of source selection for this procurement, as authorized by this Purchasing Policy.

The City may, as it deems necessary, conduct discussions with responsible proposers determined to be in contention for being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to solicitation requirements.

PRE-PROPOSAL CONFERENCE: The purpose of the pre-proposal conference is to allow an open forum for discussion and questioning with City staff regarding the Proposal with all prospective proposers having an equal opportunity to hear and participate. Oral questions will receive oral responses, neither of which will be official, nor become part of the RFP. Only written responses to written questions will be considered official, and will be included as part of the RFP as an addendum.

All prospective proposers are strongly encouraged to attend, as, unless requested by the department, this will be the only pre-proposal conference for this solicitation. If this pre-proposal conference is denoted as "mandatory", prospective proposers must be present in order to submit a proposal response.

PUBLIC ENTITY CRIME: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount as provided in Section 287.017, Florida Statutes, for a period of 36 months following the date of being placed on the convicted vendor list.

DRUG-FREE WORKPLACE: In accordance with section 287.087, Florida Statutes, preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals which are equal with respect to price, quality, and service are received by the City for the procurement of commodities or contractual services, a proposal received from a business that furnishes a form certifying that it is a Drug Free Workplace shall be given preference in the award process.

CONFLICT OF INTEREST: Proposers shall complete the Conflict of Interest Affidavit included with the RFP documentation. Disclosure of any potential or actual conflict of interest is subject to City staff review and does not in and of itself disqualify a firm from consideration. These disclosures are intended to identify and or preclude conflict of interest situations during contract selection and execution.

PROHIBITION OF GIFTS TO CITY EMPLOYEES: No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any City employee, as set

forth in Chapter 112, Part III, Florida Statutes, the current City Ethics Ordinance, and City Administrative Procedure 5311. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with City staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the City for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.

IMMIGRATION REFORM AND CONTROL ACT: Proposer acknowledges, and without exception or stipulation, any firm(s) receiving an award shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the awarded firm(s) to comply with the laws referenced herein shall constitute a breach of the award agreement and the City shall have the discretion to unilaterally terminate said agreement immediately.

BID BOND/DEPOSITS: By signing the proposal, Proposer acknowledges that it has read and understands the bonding requirements for the proposal, if applicable. Requirements for each solicitation are specified in the Proposal.

Should the contract amount be less than \$500,000, the requirements of Section 287.0935, F.S. shall govern the rating and classification of the surety.

All performance security under the subsequent contract shall be in force throughout the final completion and acceptance of the project awarded.

If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

INSURANCE REQUIREMENTS: By signing the Insurance Requirements included in a Proposal, Proposer acknowledges these conditions include Insurance Requirements.

It should be noted by the Proposer that, in order to meet the City's requirements, there may be additional insurance costs to the Proposer's firm. It is, therefore, imperative that the proposer discusses these requirements with the Proposer's insurance agent, as noted on the Insurance Check List, so that the Proposer can make allowances for any additional costs.

The Proposer's obligation under this provision shall not be limited in any way by the agreed upon contract price, or the Proposer's limit of, or lack of, sufficient insurance protection.

Proposer also understands that the evidence of required insurance may be required within five (5) business days following notification of its offer being accepted; otherwise, the City may rescind its acceptance of the Proposer's proposal.

The specific insurance requirements for each solicitation are included as part of the proposal.

DISPOSITION OF BIDS: Bids shall be opened in public at the time and place stated in the public notices and all bids received shall be read aloud stating the name of the proposer and any pertinent information related to the solicited bid. At no time shall a bid received not be read aloud.

The City shall not bear the responsibility for proposals submitted via the E-Procurement Portal, past the stated date and/or time indicated, or by any other means.

All bids received and accepted will be made available for public inspection in accordance with Florida Statutes Chapter 119.0701

PROPOSAL, PRESENTATION, AND PROTEST COSTS: The City will not be liable in any way for any costs incurred by any proposer in the preparation of its proposal in response to this RFP, nor for the presentation of its proposal and/or participation in any discussions, negotiations, or, if applicable, any protest procedures.

ACCEPTANCE OR REJECTION OF PROPOSALS: The right is reserved by the City to waive any irregularities in any proposal, to reject any or all proposals, to re-solicit for proposals, if desired, and upon recommendation and justification by the City to accept the proposal which in the judgment of the City is deemed the most advantageous for the public and the City.

Any proposal which is incomplete, conditional, obscure or which contains irregularities of any kind, may be cause for rejection. In the event of default of the successful proposer, or their refusal to enter into the City contract, the City reserves the right to accept the proposal of any other proposer or to re-advertise using the same or revised documentation, at its sole discretion.

REQUESTS FOR CLARIFICATION OF PROPOSALS: Requests by the Purchasing Specialist to a proposer(s) for clarification of proposal(s) shall be in writing. Proposer's failure to respond to request for clarification may deem proposer to be non-responsive, and may be just cause to reject its proposal.

VALIDITY OF PROPOSALS: No proposal can be withdrawn after it is filed unless the Proposer makes their request in writing to the City prior to the time set for the closing of Proposals. All proposals shall be valid for a period of one hundred eighty (180) days from the submission date to accommodate evaluation and selection process unless otherwise stated in the proposal document.

SINGLE RESPONSE: Where only one response is received to a solicitation, an award may be made to such respondent if the City determines: (1) that the price submitted is fair and reasonable; (2) that other prospective respondents had a reasonable opportunity to respond; and (3) that it is in the best interest of the City to proceed with award. Otherwise, a single response to a solicitation may be rejected pursuant to Section VII, and the Purchasing Specialist may: (1) cancel the proposed procurement; (2) solicit new bids, proposals, or sealed replies; or (3) proceed with procurement as otherwise provided in this Manual.

AWARD OF BIDS: Awards of contracts and/or purchases shall be to the lowest, responsive and responsible bidder of goods or services, representing the best value to the City. In determining the lowest, most responsive and responsible bidder and that purchase or contract that will best serve the interests of the City, the Council, the City Manager, and purchasing agent, as appropriate, shall consider, but shall not be limited to, in addition to price, the following:

1. The ability, capacity and skill of the bidder to perform under the terms of the bid documents including past performance, if available.
2. Whether the bidder can perform the contract or provide the materials or service promptly, or within the time specified, without delay or interference.
3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder as reflected in credit reports, Better Business Bureau reports or other records or reports.
4. The quality of performance of previous contracts and the providing of materials and/or services.
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract, or the providing of materials or services.

6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the materials or services.
7. The quality, availability, and adaptability of the supplies, equipment, or contractual services to the particular use required.
8. The ability and location of the bidder to provide future maintenance and service for the purchase and the financial impact upon the City to receive such future maintenance or service. If a bidder does not currently have a local project office, the evaluation committee shall consider the bidder establishing a local project office to satisfy this requirement
9. The number and scope of conditions attached to the bid.
10. Whether the bidder is in arrears to the city on a debt or is a defaulter on surety to the City; or, whether the bidders' taxes or assessments are delinquent.
11. The bidder has all current local and county Business Tax Receipts and licenses as required by law.

ITBs are the least formal review process and the award of the contract is to the lowest priced, responsive, responsible bidder. The Finance Department coordinates with the requisitioning department to determine if the lowest price bid is responsive (i.e., complies with the City's specification). A review of the bid is required to determine if it conforms to the requirements stated in the solicitation. If the lowest priced bid is found non-responsive, then the next low bidder will be evaluated and so on until a responsive contractor is found. When the lowest bidder is found non-responsive or not responsible, this determination must be in writing with the appropriate documentation.

The Finance Department reserves the right to challenge any award recommendations of the user division/department.

City Council will approve bid award recommendations wherein the award to each vendor exceeds \$50,000, unless previously exempted or approved. The Finance Department is responsible for the drafting of the Council Agenda Request and assuring appropriate approvals are obtained. The Finance Department will then submit the Council Agenda Request to the City Manager. Award shall not be final until issuance of a purchase order or contract by the Finance Department.

AWARD TO OTHER THAN THE LOW BIDDER

If award of a bid is made to other than the low bidder, justification for doing so shall be documented in writing and included in the Bid File. Justification for awarding to other than the low bidder may include: does not meet specifications (must specify how bid does not meet specifications); unsatisfactory performance on previous City contracts; unfavorable references; unable to meet project time or delivery requirements, etc.

CHANGES IN FINALIZED BIDS: Any increase in unit price of any bid formally approved by the Edgewater City Council must be re-submitted to the Council for approval unless the increases were allowed by the bid or contract document.

WAIVER OF IRREGULARITIES: The City Manager on behalf of the City Council shall have the authority to waive any and all irregularities in any and all formal bids.

TIE BIDS: In the event of a tie (with each business certifying that it is a Drug-Free Workplace), **both in individual scoring and in final ranking**, the firm with the lowest volume of work on City projects within the last 5 years will receive the higher individual ranking. This information will be based on information provided by the Proposer, subject to verification at the City's option. If there is a multiple firm tie in either individual scoring or final ranking, the firm with the lowest volume of work shall receive the higher

ranking, the firm with the next lowest volume of work shall receive the next highest ranking and so on. If neither vendor has performed in work in the last five years, the preference will be given to the Proposer within the city limits or principal office closest to City Hall.

CONTRACTS: Whenever required, the successful bidder shall promptly execute a formal contract to be approved as to its form, terms and conditions, and signed by the proper authority. Contract time will be based on engineers' estimates and will be mutually agreed upon by both the City and the successful bidder during contract negotiations. When required, such bidder shall also execute and deliver to the Finance Department a good and sufficient performance and/or payment bond in the amount specified in the Invitation for Bid. Any bidder who has a contract awarded to him/her and who fails to execute promptly and properly the required contract and bond, shall forfeit his/her certified check or bid bond. Upon the execution of the contract by the successful bidder, his/her certified check will be returned or his/her bid bond may be released. The certified checks of unsuccessful bidders shall then be returned.

CITY'S RIGHT TO INSPECT: The City or its authorized Agent shall have the right to inspect the Contractor's facilities/project site during and after each work assignment the Contractor is performing.

WARRANTY REQUIREMENTS:

1. For purposes of this warranty requirement, the term "goods" means any equipment, machines, tools, vehicles, hardware, supplies, component parts or other tangible personal property procured by the city, to which procurement this warranty requirement is made applicable through the specifications. The term "City" means the City of Edgewater, acting through its employees, departments, boards, council.
2. The successful bidder (also referred to herein as "vendor"), by submitting the bid, furnishes the following warranty as provided below:
 - a. Vendor warrants that the goods delivered are newly manufactured, free from defects in materials and workmanship and conform in every respect to City's specifications. Vendor also warrants that if, during the warranty period, all or any portion of the goods: (a) fail for any reason, (b) are discovered to be non-conforming, or (c) are defective in materials or workmanship, vendor will replace such failed, non-conforming or defective goods at no cost to city within the same time limit as the delivery period. This warranty shall run from date of official acceptance of the goods by city, which date is either the installation date or in-service date as shown on city records or the date of formal acceptance of the goods in writing by an authorized city official, whichever occurs first, and end one (1) year after the date of the official acceptance. This warranty shall be unconditional, except that it shall not apply to obvious abuse, misuse or damage caused by city.
 - b. As between vendor and city, the express warranty given in subparagraph (b) (1) is in lieu of any other express warranties. Should this warranty fail of its essential purpose, City will continue to have recourse under applicable Florida law. This warranty is intended for the exclusive benefit of the City and does not create any warranties (express or implied) or causes of action in favor of any third parties.
 - c. If a manufacturer of the goods or of component parts of the goods provides a special or independent warranty which is longer than the period provided for this warranty, or which provides terms more favorable to city than those contained in this warranty as to any other provision, the provisions of this warranty shall not be construed to diminish or conflict with the special or independent warranty given by such manufacturer.
3. The successful bidder, by submitting the bid, agrees to give the following indemnity with respect to the goods:

Vendor shall defend, indemnify, and save harmless the City, its officers, agents and employees, from all suits, actions or claims of any character, type or description brought or made on account of any personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, arising out of or occasioned by any breach of any warranty, express or implied, as to the goods or the fault of subcontractors, in the performance of the contract, purchase order or price agreement; provided, however, that this indemnity shall not apply to any personal injury including (including death), property damage or other harm caused solely by the negligent use, misuse or abuse of the goods by city, or caused solely by any negligent act or omission of city unrelated to the use of the goods. In the event of joint or concurring responsibility of vendor and City, responsibility and indemnity, if any shall be apportioned comparatively in accordance with the laws of the state of Florida, without, however, waiving any governmental immunity available to the City under Florida law. This provision shall not be construed for the benefit of any third party, nor does it create or grant any right or cause of action in favor of any third party against city or vendor, this provision being solely intended to provide for indemnification of City from liability for damage to third persons or property as set forth in this paragraph.

SECTION VIII COMPETITIVE PROCUREMENT

PURPOSE: The City will make award to the proposal that meets the requirements and criteria set forth in the solicitation and whose award will, in the opinion of the City, are in the best interest of the City. Proposals shall be evaluated based on the requirements set forth in the solicitation. Criteria that will affect the price should be considered in the evaluation, and shall be objectively measurable, such as financial capability, references, discounts, transportation costs, past performance, total or life cycle costs and overall responsiveness of the submittal. No criteria should be used in the evaluation that is not set forth in the solicitation.

Factors to be considered in determining whether the standard of responsibility has been met include whether, in the City's determination, a prospective vendor/contractor has:

1. appropriate financial, material, equipment, facility, and personnel resources, experience, knowledge, and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
2. a satisfactory record of performance on similar projects;
3. a satisfactory record of integrity;
4. qualified legally to contract with the City; and
5. supplied all necessary information in connection with the inquiry concerning responsibility including but not limited to any licenses, permits, insurance, price sheets or required organizational papers.

The solicitation for Proposals shall state the relative importance of price and other evaluation factors. Award can be made to the most responsive, responsible offeror whose proposal is determined to be the most advantageous to the City in accordance with the evaluation criteria contained in the Proposal.

Evaluation of Proposals (Procedure):

The City's procedure for selecting is as follows:

1. The City Manager shall approve an Evaluation Committee to review all proposals submitted in accordance with Statute. At a minimum there will be one member of the

Finance Department as part of the evaluation committee. Plus there shall be a minimum of three members of the committee, but always an odd number. ITB's that are solely priced based will be reviewed by the Purchasing Specialist and Project Manager as described below and will not be subject to the Evaluation Committee process.

2. Request for Proposals issued.
3. Subsequent to the closing of proposals, the Purchasing Specialist and Project Manager shall review the proposals received and verify whether each proposal appears to be minimally responsive to the requirements of the published RFP. Meetings shall be conducted in accordance with Florida's Sunshine Law and the Purchasing Specialist shall publicly post prior notice of such meeting in the lobby of the City Hall at least one 1 day in advance of all such meetings.
4. The committee members shall review each Proposal individually and score each proposal based on the evaluation criteria stated herein.
5. Prior to the first meeting of the evaluation committee, the Purchasing Specialist will post a notice announcing the date, time and place of the first committee meeting. Said notice shall be posted in the lobby of the City Hall not less than 3 working days prior to the meeting. The Purchasing Specialist shall also post prior notice of all subsequent committee meetings and shall endeavor to post such notices at least one 1 day in advance of all subsequent meetings.
6. The committee will compile individual rankings, based on the evaluation criteria as stated herein, for each proposal to determine committee recommendations. The committee may at their discretion, schedule presentations or demonstrations from the top-ranked firm(s), make site visits, and obtain guidance from third party subject matter experts. The final recommendation will be decided based on review of scores and consensus of committee.

SECTION IX PROFESSIONAL SERVICES CONSULTANT'S COMPETITION NEGOTIATION ACT (CCNA)

PURPOSE: All requirements for CCNA Professional Services, as defined in Chapter 287.055, Florida Statutes shall be publicly advertised once in a newspaper of general paid circulation or as otherwise indicated in Florida Statutes. Allowable exceptions to public advertisement include:

1. Projects involving a public emergency, pursuant to Section IV of the Purchasing Policy.
2. When the basic construction of the completed project is estimated to be less than \$325,000 or defined as category five in Florida Statutes, Section 287.017, whichever is greater.
3. When the fee for professional services for a planning or study activity is estimated to be less than \$35,000 or defined as category two in Florida Statutes, Section 287.017, or as may be amended, whichever is greater.

The Project Manager for acquisition of professional and consultant services under an RFQ (Request for Qualifications) should suggest recommendations for appointment of evaluation committee members who have knowledge and interest in the project. The Evaluation Committee should consist of: Department Head or designee, Project Manager and a staff member outside the requesting Department. The City Attorney's office may also provide a representative who shall participate in an advisory capacity as a non-voting member. The Finance Director or designee shall chair the meetings. The City's policy and procedures concerning the evaluation process will be followed.

The Evaluation Committee shall determine specific qualifications necessary for the project consultant and specify the form for submittal of qualifications by prospective consultants.

For publicly announced requirements, the Department/Division/Office will provide the Finance Department a RFQ request and scope of services; evaluation criteria and the Finance Department will publish the notice in a newspaper of general circulation and shall indicate how interested consultants may apply for consideration. Trade journals or trade magazines may also be utilized for public advertisement for consultant services. Purchasing will administer the opening of the proposals and the selection/negotiation committee meetings.

Florida Statutes require reasonable notice to the public, such as the evaluation/negotiating sessions with consultants. The notice will include the committee's name and purpose, location of meeting, date and time of meeting, and shall be posted 72 hours in advance of the meetings. A copy of the meeting notice shall be posted in City Hall. Part of the notice of public meeting shall include the statement: "Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk, 48 hours in advance of the meeting". The Chairman of the meeting will ensure a record of the meeting is maintained, either through a written or recorded method or in accordance with the Public Records Law of the State of Florida.

The City shall make a finding that the firm or individual to be employed is duly qualified to render the required service. The Evaluation Committee shall review statements of qualification and performance data submitted in response to the public announcement and shall select, in order of preference, no fewer than three (3) firms deemed to be the most highly qualified, if at least three (3) firms respond to the announcement. If there are less than three (3) firms responding and after due diligence and searching it is decided every effort was made to meet Florida Statute 287.055, the City will interview all respondents and proceed with the evaluation process. Consultant evaluation criteria shall include, but may not be limited to: approach to work, the ability of professional personnel; past performance and willingness to meet time; location of no more than 10 percent may be used; recent, current and projected workloads; and volume of work previously awarded to the firm by the City, with the object of effecting an equitable distribution of contracts among qualified firms, provided such equitable distribution does not violate the principle of selection of the most highly qualified firms.

In general, the City wishes to avoid the expense to the City and to proposers of unnecessary oral interviews. Therefore, the City will make every reasonable effort to achieve the ranking using written submittals alone. If no single top-ranked firm can be clearly identified by review of the written submittals alone, then the evaluator(s) will request the Purchasing Agent to schedule the top ranked firm(s) for oral presentations/interviews.

The Evaluation Committee may conduct some type of public discussions with and may require public presentations by a minimum of two (2) firms pertaining to the firms' qualifications, approach to the project, and ability to furnish the required service. Each evaluation committee member will review the statement of qualifications submitted by each firm and will evaluate each firm's qualifications utilizing the specific evaluation criteria established for each RFQ which will approximately resemble the attached Professional Services Evaluation form (PSFE). The scores of the committee members will be added to determine the ranking of the firms (first, second, third) public presentations by firms are not conducted, the ranking established during the "short list" phase, which includes discussion with the minimum of three (3) firms, will be the ranking order of the firms.

The committee shall maintain the summary listing of the rank order of the firms being evaluated, present their recommendations of the three (3) most qualified firms to the Council, if at least three firms

respond to the announcement, and request the Council to approve the ranking and to authorize staff to negotiate a contract with the top firm.

The negotiating committee will be appointed by the City Manager and may consist of the same individuals as the evaluation committee to the extent possible. Upon Council direction, the negotiating committee shall negotiate a contract with the most qualified firm for professional services for compensation, which is determined to be fair, competitive and reasonable.

Detailed discussions must be held by the firm and the City to clearly establish the scope of the project and the exact services to be performed by the Consultant. The committee shall negotiate a contract for professional services with the most qualified firm at a compensation, which the City determines is fair, competitive and reasonable. In making such determination, the City shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.

Should the City be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the City determines to be fair, competitive and reasonable, negotiations with that firm must be formally terminated. The City shall then undertake negotiations with the second most qualified. Failing accord with the second most qualified firm, the City must terminate negotiations. The City shall then undertake negotiations with the third most qualified firm.

Should the City be unable to negotiate a satisfactory contract with any of the selected firms, the City shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with the prior requirements until an agreement is reached

For all lump-sum or cost-plus fixed fee contracts of \$195,000 or defined as category IV in Florida Statutes Section 287.017, whichever is greater, the firm awarded the contract must execute a truth-in- negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete, and current, at the time of contracting. Any contract requiring this certificate shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or non- current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

SECTION X

PROCEDURES FOR MULTIPLE CONSULTANTS UNDER COMPETITIVE CONSULTANT NEGOTIATION ACT (CCNA)

PURPOSE: To set standards as to how scopes can be split between those services within the scope of practice as defined by the laws of Chapter 287.055, Florida Statutes.

The Selection Process described below will be followed to select a consultant when awarding master agreements under continuing contracts when multiple qualified consultants are under contract with the City. Whenever possible, the objective is to distribute the work equally amongst the consultants under contract. Equal distribution of the work will be measured by the dollar value of the work awarded; such that each consultant gets (if work requirements permits) an equal share of the total dollars spent annually on the Master Agreements.

1. Selection Process:

When dealing with multiple consultants under a CCNA Master Agreement, the Department, responsible for the project, will select only one of the consultants to solicit for a proposal when criteria items a. or b. apply. On projects where criteria a. or b. do not apply, the Department,

responsible for the project, will prepare a scope of work document that Finance will use to solicit sealed proposals from the qualified consultants under contract with the City for the specified type of work. The following criteria items c. through g., in order of acceptance, will be used to determine which consultant will be awarded the work:

- a. Specific and unique technical expertise not available from any of the other consultants under contract. This criterion will not apply to all master agreements.
- b. Maintain project continuity. This criterion will not apply to all master agreements.
- c. Past performance on previous City work.
- d. Availability of resources to undertake assignment.
- e. Willingness to meet time and budget requirements.
- f. Distribution of dollars awarded to date under the Master Agreement with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most qualified firms.
- g. If the consultant does not choose to participate, the City will select another consultant using the criteria in paragraphs (a - f) above.

When multiple sealed proposals are solicited, the Department responsible for the project shall evaluate the sealed proposals in accordance with the above criteria and select one of the consultants to perform the work.

2. Generating the Master Agreement:

The Department, responsible for the project (User Department), must send a Request for Service/Proposal to the consultant selected (as provided herein) or Finance must send (as provided herein) a Request for Service/Proposal to the multiple consultants under contract. The request asks for a technical memorandum/scope of services and a fee proposal. The Request for Proposal must include:

- a. Statement of Work - The statement of work will provide each consultant with a complete description of the requirement enabling them to prepare a proposal with valid man-hours. The City may ask the consultant for solutions and to identify unacceptable conditions.
- b. Elements - The minimum required elements are the purpose and brief description of the project; description of the work/service to be performed; the location(s) where the work/service is to be performed; the basis for determining the award of the Master Agreement; a contact person for the City for questions or clarifications including the telephone number and the extension number; and what is the required delivery date or period of performance. Any questions or clarifications given must be forwarded to all consultants.
- c. Submittal - The User Department or Finance Department must indicate when the proposal is due back to the City. Be very specific of when and where the proposal is to be delivered, indicating that if the City does not receive the submittal on time, the City understands the consultant has chosen not to participate in the process for that particular project.
- d. Additional information - If additional information is available for the consultant's review and consideration, please indicate the location of those documents and the contact person including telephone number and extension number.
- e. Meeting/Site Visit - If a meeting and/or a site visit are necessary to discuss the project, please indicate the location, time and date of the meeting.

3. The consultant shall submit the following in response to the City's Request for Proposal:

- a. Detailed Scope of Work and Services – The Detailed Scope of Work and Services shall specifically address each aspect of the project and tell in detail how the consultant will accomplish the work. Provide a schedule that, as a minimum shall include a list of milestones and a schedule for completion. Each milestone task must be described in sufficient detail for the Department to evaluate the consultant's understanding of the project and action plan for completion.
 - b. Fee Proposal – The Fee Proposal shall include as a minimum the level of effort proposed to support the work. This should include a list of man-hours by staff position and the contracted hourly rate for that position. The hourly rate should match the hourly rate included in the Master Agreement, unless the hourly rate is negotiated to a lower rate. Any subcontracted effort must be included in the proposal and supported by a matching fee proposal.
 - c. Acceptability of Proposal from the selected consultant - The proposal received from the selected consultant must be acceptable to the City. Criteria to consider when determining the acceptability may include understanding requirements, technical approach, innovative techniques or solutions, management approach, proposed fee and the ability to meet cost or time constraints. The User Department will determine the acceptability criteria for the Master Agreement.
4. **If the proposal is found to be unacceptable as submitted, the City will continue to negotiate with the selected consultant until an acceptable resolution is obtained.**
 - a. If the proposal as submitted is not fully acceptable, but could become acceptable with relatively minor changes to the scope of services, proposed fee schedule or fee proposal, then the Department will enter into discussions with the consultant to refine the proposal making it acceptable. Based on those discussions, the consultant must submit a revised proposal, which the City finds fully acceptable.
 - b. If the proposal as submitted is so unacceptable that it cannot be made acceptable without major modifications to either the technical scope of services, the proposed fee, or the proposed schedule, then the City has the option to formally terminate negotiations with the consultant and enter into negotiations with the next qualified consultant for the project, and so on, or re-solicit proposals.
5. **The User Department must provide copies of all documentation to the Finance Department including:**
 - a. Request for scope of work and services and fee proposal;
 - b. Originals of the consultant's submittals;
 - c. Determination of acceptability and recommendation for award (master agreement request form);
 - d. Prepare Council Agenda Request (CAR) for awards greater than \$50,000.

SECTION XI PROCUREMENT OF DESIGN-BUILD AND/OR DESIGN-BUILD OPERATE SERVICES

PURPOSE: Pursuant to § 287.055(9), Fla. Stat. (2007), the following procedures shall be followed in selecting firms when design-build or design-build-operate services are sought by the City. Definitions contained in § 287.055(2), Fla. Stat. (2007), have the same meaning in this part except "project". "Project" shall mean a fixed capital outlay project described in the public notice including individual facilities; grouping of facilities; and rehabilitation and renovation activities.

1. **Selection of the Design-Criteria Professional**

A design criteria professional shall be selected and contracted with pursuant to § 287.055, Fla. Stat. (2007) or otherwise currently be under contract or employed by the City. The design criteria professional will not be eligible to render services under design- build or design-build-operate contracts executed pursuant to the design criteria package. The design criteria professional may be required to evaluate qualifications and proposals submitted by firms, review detailed working drawings for the project, and evaluate project construction for compliance with the design criteria package.

2. **Design Criteria Package**

The design criteria professional shall prepare a design criteria package on behalf of the City. The purpose of the design criteria package is to provide sufficient information upon which firms may prepare proposals or upon which negotiations may be based. The firm to whom the contract is awarded will be responsible for creation of the project design based on the criteria in the design criteria package.

3. **Minimum Qualifications for Firms Providing Design-Build Services**

Firms seeking to provide design-build or design-build-operate services shall be:

- a. Certified under § 489.119, Fla. Stat. (2007), to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
- b. Certified under § 471.023, Fla. Stat. (2007), to practice or to offer to practice Engineering; or certified under § 481.219, Fla. Stat. (2007), to practice or to offer to practice architecture; or certified under § 481.319, Fla. Stat. (2007), to practice or to offer to practice landscape architecture.

4. **Request for Qualifications**

- a. The City shall give public notice of each instance in which professional services are being sought for a design-build or design-build-operate project, providing a general description of the project and requesting qualifications from firms. The notice shall be published in appropriate publications as determined based upon the type of project.
- b. A firm desiring to provide design-build or design-build-operate services for a project shall timely submit a letter of interest to the City, which shall include the following: qualifications, availability and past work. Along with its qualifications, the design-build firm shall file a sworn statement pursuant to § 287.133, Fla. Stat. (2007).

5. **Qualification of Firms**

The City shall determine the relative ability of each interested firm to perform the services required for the project based on the factors set forth in Section XI (3) above. After reviewing the letters of interest, the City shall select no less than three firms deemed to be most highly qualified to provide the required services and request those firms to provide proposals for the project.

6. **Proposal Selection**

- a. Only firms selected as most qualified will be notified by email by the City to submit sealed proposals. Firms not selected will be notified by email.
- b. Pursuant to the request for proposals, each selected firm shall timely submit its sealed proposal to the City for evaluation. The proposal shall be based on the criteria in the request for proposal and design-build or design-build-operate package.
- c. The City shall evaluate each firm's proposal based on price and technical and design aspects of the project. The evaluation process shall be based on criteria and procedures established prior to the solicitation of competitive proposals.
- d. Where further clarification of proposals or additional information is needed, the City shall require informational presentations by the selected firms.
- e. The City shall designate and rank not less than three firms, in order of preference, whose proposals the City deems to be most advantageous, having taken

into consideration the evaluation criteria and the Proposer's responsiveness to the request for proposals. A notice of intended action shall be provided by email to the selected firms.

7. **Competitive Negotiations**

a. The City shall begin contract negotiations with the designated firms in order of rank for fair, competitive and reasonable compensation.

b. Should negotiations with the most highly ranked firm prove unsuccessful, as determined by the City or designee, negotiations with that firm shall cease and negotiations shall begin with the next most highly ranked firm. Negotiations shall continue in accordance with this section until an agreement is reached. The City or designee is authorized to award the contract.

c. If a satisfactory agreement is not reached with any of the designated firms, the City will either:

1. Designate and rank additional responding firms, in order of preference, for competitive negotiations pursuant to (1) and (2) above;
2. Republish the request for qualifications, with any appropriate modifications; or
3. Abandon the process entirely.

8. **Rejection of Proposals**

a. The City reserves the right to reject any and all proposals, provided such action is done in good faith, and is not arbitrary and capricious.

b. If the City finds it necessary to reject all the proposals, a written statement to this effect shall be placed in the proposal file and the Proposers shall be notified. The City may then republish the request for qualifications, with any appropriate modifications. Any interested firm will have the opportunity to submit or resubmit its qualifications to the City for consideration.

9. **Emergency Procurement of Design-Build Services**

If the City determines in writing that an immediate danger to the public health, safety, welfare or other substantial loss to the public requires emergency action, the City may proceed with the procurement of the design-build services without competition.

10. **Reuse of Plans**

When the City reuses existing design criteria packages and resulting plans from a prior project, the requirements of this subpart shall not be applicable.

11. **Alternative Procedure for Procurement of Design-Build or Design-Build-Operate Services**

In lieu of the policies contained herein, the City may engage in a qualifications-based selection process for design-build or design-build-operate services as set forth in section 287.055(9)(c). This alternative process would allow the City to issue a request for qualifications without price, to rank the respondents and to begin negotiations with the top ranked respondent. The selected firm would then establish a guaranteed maximum price and guaranteed completion date. Should the City elect this alternative process, it shall be made clear in the original solicitation.

Section XII

Evaluation of Proposals and Recommendation for Award

PURPOSE: Once the proposals have been opened, an Evaluation Committee or Technical Reviewer must evaluate them. The Finance Department must be present at each evaluation meeting and shall chair the Evaluation Committee. The Evaluation Committee is structured to provide the skills necessary for the particular project being evaluated. Certain procurement actions may require a technical review, which may be conducted at the discretion of the Department Head. To the extent a

Technical Review is needed, they shall comply with the Sunshine Law and Public Records requirements. Additional skills required for evaluation may include engineering, general business, legal, or information technology. The Evaluation Committee as a whole will meet to arrive at a recommendation for award. When the Department or Technical Reviewer responsible for the project prepares recommendation, the tabulation sheet must be included with the recommendation of award. Once all the steps above are completed, the contract will be prepared and the Council Agenda Request must be written, if necessary.

Evaluation Committee meetings must comply with the State of Florida's Sunshine and Public Records Laws. Reasonable notice of the date, time and place of the meeting must be given. The meeting should be recorded, when possible. If not recorded, minutes must be taken by the person chairing the meeting. At the meeting, the committee members must return all required forms such as the Conflict of Interest Statements and individuals or group evaluation forms and any other pertinent data as necessary for the evaluation of the project.

1. The evaluation process is a key function in the selection of a quality contractor/consultant. It is very important that this process be conducted in a professional and consistent manner; therefore team members need to be flexible and available for all meetings during the evaluation/review process, including demonstrations and presentations. City employees that are nominated to serve on an Evaluation Committee will follow these guidelines and procedures. The Evaluation committee shall review the proposals for references, responsiveness and responsibility of submittals. The Evaluation Committee evaluates the submittals against the established evaluation criteria stated in the solicitation. Evaluation Committee meetings are considered "open meetings" under the Government-in-the-Sunshine Law and must be open, notice posted and minutes taken.
2. For all Proposals, CCNA and special projects, if the procurement has a value of \$250,000 or more per year, then the Department Director must be a member.
3. For contracts awarded under the State of Florida's Consultants' Competitive Negotiation Act (CCNA): This formal evaluation process will identify the firms that best meet our requirements in accordance with the evaluation criteria stated in the solicitation. The Evaluation process requires a review of all proposals independently against the established evaluation criteria as stated in the solicitation. The Finance Department will supply the evaluation criteria as stated in the solicitation. The evaluation sheets shall include comments of the strengths, weaknesses and deficiencies of each proposal that support the staff recommendation. The Evaluation Committee shall evaluate statements of qualifications and performance and shall conduct discussions with and may require public presentations by no fewer than three most highly qualified firms (if more than three firms) selected in order of preference. Each evaluation committee member will review the statement of qualifications submitted by each firm and will evaluate each firm's qualifications utilizing the Professional Services Evaluation Form containing the specific evaluation criteria established for each RFQ which will approximately resemble the attached PSEF form. The scores of the committee members will be added to determine the ranking of the firms (first, second, third). The evaluation sheets will be included in the backup of the agenda or a tabulation form displaying the scores of all committee members can be submitted instead of individual sheets. If public presentations by firms are not conducted, the ranking established during the "short list" phase, which includes discussion with the minimum of three (3) firms, will be the ranking order of the firms.
4. Request for Proposal (RFPs) (Non-CCNA): This process is similar to the above. It includes a price/cost evaluation that the Finance Department will provide as part of the overall evaluation. The method of award must be stated in the solicitation and may be of two types; low price technically acceptable or best value. For low price technically acceptable process, the evaluation process will start with the lowest proposal to determine if they are technically

qualified. If not, then proceed to the next low until an acceptable proposal is found. A pass/fail or yes/no evaluation is required to determine if the proposal meets the technical requirements. For Best value process or an award to other than the lowest price, the team must evaluate all proposals and document the advantages of the recommended firm to support the best value recommendation. The documentation must specifically address why the recommended award is worth the added cost over the lowest (or lower) price(s). The evaluation sheets that support the best value justification will be part of the backup documents.

- Method of evaluations: There are two approved methods of evaluations to be used:
 - Weight (points) system, can be a two-step process
 - Rating (adjectival) system can be a two-step process.
5. The Evaluation Committee Leader is responsible for ensuring the Evaluation Committee performs Past Performance or Reference checks, and guiding the team to a consensus recommendation. The Finance Department will monitor the evaluation process and provide guidance at the start of each formal evaluation. If requested, training on the evaluation process can be provided to the team with little or no previous evaluation experience. The Finance Department will review forms for completeness and compliance with the policy. Any forms that are not properly filled out or which lack appropriate comments or documentation to support the award recommendation may result in the delay of the award recommendation. Each team member must be thoroughly familiar with the contents of each proposal and the requirements of the evaluation criteria in the solicitation. Team members should evaluate each proposal on its own merits and in accordance with the requirements stated in the solicitation. At the Evaluation Committee meeting, team members will work towards reaching consensus and will submit a single recommendation for proceeding. The Evaluation Committee Leader, with assistance from the Finance Department Staff, will guide the team's deliberations.
 6. List the Strengths, Weaknesses and Deficiencies using the following guidelines:
 - Strengths: Those areas in which the proposal meets or exceeds the City's requirements.
 - Weaknesses: Those areas where the proposal lacks soundness or effectiveness, which could prevent fully successful performance of the contract.
 - Deficiencies: Those areas where the proposal fails to meet the City's requirements.

These strengths, weaknesses and deficiencies can be used in the negotiations, presentations and discussions during the second step of the two-step process. The Finance Department is responsible for performing a cost or price analysis on each solicitation. The analysis will include a determination of fair and reasonable price for the recommended award. The price/cost proposal of the RFP should be evaluated by the Finance Department personnel using the following ratio:

The lowest price proposal receives the maximum points or is rated highly acceptable. Divide the lowest vendor's price by the next vendor's price to receive a percentage and multiply this percentage by the weights to determine the next score.

If the contract is based upon various hourly rates or level of effort, the Specialist must make some assumption based upon anticipated usage or historical data. This estimated cost must be analyzed using the above process or if developed in the RFP a way to utilize the rates as benchmark. Presentations and interviews must comply with the State of Florida's Sunshine and Public Records Laws. The meeting should be recorded, when possible. If not recorded, minutes must be taken by the person chairing the meeting. If presentations are necessary, the details of the presentations must be discussed such as time for each presentations and the overall schedule. Once the information is collected and compiled, the ranking must be established. The Tabulation Form must be updated and posted in the city's bidding service providers' site.

Once the short-listed firms have been identified, staff must ensure compliance with the following process:

- Notify the Consultants by fax or email of the City's determination. The firms must be notified within the next two (2) days of the Evaluation Committee meeting. The notification shall include details of the interviews/presentations including but not limited to the following:
 - Date and time of the interview/presentations.
 - Location of the meeting.
 - Time allotted for each firm.
 - Additional information if requested by the Evaluation Committee.
- Finance will coordinate the schedule of the interviews/presentations with the Evaluation Committee meeting and when applicable will send invitations via email.
- Interviews/Presentations forms must be sent to the User Department requesting information for the evaluation of the firms.
- Prior to the date of the interviews/presentations, staff must ensure that the evaluation forms and the sign-in sheet forms are completed and available for each member of the Evaluation Committee. There must be a sign-in form for each of the firms presenting.

SECTION XIII BONDS AND BID SECURITY

PURPOSE: The City Clerk is responsible for ensuring that any required surety bonds are maintained. Before commencing work on the construction of a public building or repairs upon a public building or public work, the contractor shall deliver to the City a payment and performance bond that has been recorded in the public records of Volusia County. The bonds must state the name and principal business address for both the principal and the surety and must contain a description of the project sufficient to identify it.

Requirement for Bid Security: Bid security shall be required for all competitive sealed bidding for capital improvement construction contracts when the price is estimated to exceed \$100,000 or when the City Manager or designee deem appropriate as detailed in the bid document. Bid security shall be an original bond provided by a surety company authorized to do business in the State of Florida or the equivalent in the form of a cashiers or certified check. The City Manager may require bid security for other types of bids and Request for Proposals (RFPs). Amount of Bid Security shall be indicated in the Contract Documents. When the Invitation for Bids (IFBs) or RFPs requires security, noncompliance requires that the bid be rejected.

As determined by the Finance Director or designee or mandated by Florida Statutes (FS 255.05), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

1. A performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the City, in an amount equal to one hundred percent (100%) of the price specified in the contract.

2. A payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds or in circumstances other than specified in this Section.

SECTION XIV CONTRACTS AND CONTRACT PROCESSING

PURPOSE: The City contracts for a varied number of services and products. Formal contracts attest to definitive detailed obligations of goods, services and/or payments of monies between the City and others, as approved by the City Council or as delegated by the City Council via formal action or ordinance. Contracts will be issued in conjunction with either a blanket or inverted purchase order, which will be used as the payment tool for the contract.

DEFINITION: A written or oral agreement between two or more competent parties that defines a job or service to be performed and which is legally enforceable.

HOW PREPARED: The Finance Department will prepare and coordinate contract activity, including contract preparation; legal reviews; contract amendments; renewals; contract change order preparation, or review if prepared by the City's consultant; change order processing; notice to proceed; pay request review and processing for inverted purchase orders, unless delegated, and any other activity as determined by the City Manager.

PROCEDURE: All requests for contract preparation will be sent to the Finance Department. The dollar thresholds for procurements will be followed unless exempted by code, ordinance or prior Council approval. Contracts with no dollar value will be signed by the City Manager unless he wishes to have Council approve.

A draft contract will be prepared by the Finance Department and sent for review to the Contractor, City Attorney and the requesting department. If required, the Finance Department will submit a Report to Council for the approval of the contract. All review comments will be routed to the Finance Department. All contracts must be physically or electronically signed. The contract will be revised and routed for signature from the following parties:

Contractor
Department Head
Finance Director
City Attorney
City Manager
Mayor

The City Clerk will ensure the Mayor's signature is obtained as required. The City Clerk will then sign and affix the City seal. The City Clerk will return the documents to Finance Department for distribution. Distribution of the original contract is as follows: Vendor, City Department, City Clerk and Finance Department. If multiple departments require the document, copies will be made and distributed to departments. If the contract involves the collection of revenue, the Finance Department receives two

copies of the contract. The City Clerk will record and retain all officially approved and executed original contract documents.

RESPONSIBILITY: The affected department will monitor the contract for compliance with terms and conditions of the contract. The Finance Department will monitor contracts for procedural, legal and statutory compliance, and to assist in dispute resolution.

E-VERIFICATION:

- a. In accordance with Florida Statute Chapter 448.095, A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify System.
- b. The City shall not enter into, or renew, a contract with a vendor/contractor that is not enrolled in E-Verify. Any vendor/contractor that has a contract with the City shall be contractually required to utilize E-Verify to confirm the employment eligibility of any employee hired during the contract term.
- c. The City shall verify the Contractor's /Vendor's participation in the E-Verify Program by confirming their enrollment on the Department of Homeland Security E-Verify Website. Vendor's/Contractor's whose participation cannot be verified on the Department of Homeland Security's E-Verify Website, shall provide acceptable evidence of their enrollment prior to award and the execution of a contract. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.
- d. A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the contractor hires or employs a person who is not eligible for employment.
- e. Nothing in this section may be construed to allow intentional discrimination of any class protected by law

SECTION XV PURCHASES NOT REQUIRING BIDS

PURPOSE: This section defines the limitations of purchasing without solicitation. Authorization for purchase of these items will follow the threshold approval authority as outlined in this Policy.

SOLE SOURCE AND PROPRIETY SOURCE: The following criteria must be met in order to satisfy the sole source or proprietary source requirement:

- a. It is the only item that will produce the desired results (or fulfill the specific need) ...or
- b. The item is available from only one source of supply ... or
- c. The item is available from more than one vendor but due to extreme circumstances, only one vendor is suited to provide the goods or services.

Sole source and proprietary source purchases are exempt from competitive requirements. However, all sole source requisitions exceeding \$50,000 in value will be electronically advertised for a period of at least 5 business days. The steps to follow for sole source and proprietary source purchases are as follows:

- a. The User Department/Division and the Finance Department shall attempt to locate competition. Staff will also check for piggyback contracts. If no other sources are found, the User Department/Division shall submit to the Finance Department a completed sole source/proprietary source form, indicating the requisition number.
- b. A sole source or proprietary source form shall be used to justify and document the requirement. The form shall state why only one source can produce the desired results (or fulfill the specific need).
- c. The Finance Director shall review and approve or disapprove, in writing; sole source/proprietary source designation.
- d. The User Department/Division shall be notified of disapproved requests and the purchase shall be made in accordance with standard procedures.
- e. When the Finance Director approves a sole or proprietary source, staff shall conduct negotiations on price, delivery, and terms. The price must be determined fair and reasonable.
- f. The Finance Department shall keep a log of sole/proprietary source purchases, which includes the vendor name, the amount, item description, justification, and the purchase order number.
- g. For those instances that services are needed involving multiple years (i.e. maintenance of equipment, warranty, etc.) the request must be combined to capture the project, as a whole, and the proper approval must be obtained.

STANDARDIZATION

DEFINITION: Standardization is the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose. Proprietary purchases (usually components) maintain a degree of continuity to the original or existing decor, equipment, or programs.

Where standardization is determined to be desirable by the Finance Director, the purchase of materials, supplies and equipment and certain contractual services may be made by negotiation.

Compatibility to existing equipment will be an acceptable justification for waiver of bidding procedures provided the item meets the other criteria within the definition of sole source item (i.e.; available from only one source and only item that will produce the desired results).

COOPERATIVE PURCHASING

DEFINITION: An approach in which several organizations jointly buy selected items. They may form or utilize a centralized buying service that purchases specified types of items for all members of the group or cooperate informally. The resulting volume buying usually produces significant cost savings for group members.

The Finance Director shall have the authority to join with other units of government in cooperative purchasing ventures when the best interests of the City would be served and the same is in accordance with City Ordinances. Purchases in any amount may be made against established G.S.A, State of Florida, or other units of government and non-profit organizations including established and approved Cooperative Purchasing Associations (i.e., Sourcewell, OMNIA Partners, The Cooperative Purchasing Network -TCPN, National Joint Powers Alliance - NJPA, The Interlocal Purchasing System

- TIPS USA, BuyBoard etc.) term contracts without bidding, provided they are in the best interest of the City.

Purchases from the current City cooperative contracts, state term purchasing contracts, or state university system cooperative bid agreements, non-profit organizations, and approved Cooperative Purchasing Associations will be an acceptable alternative procedure for bidding, providing all terms and conditions of the contract apply.

PURCHASE OF USED VEHICLES, EQUIPMENT AND FURNISHINGS

The City Manager or designee may determine on a case-by-case basis, the method(s) of purchasing used motor vehicles, equipment or furnishings. Such methods may include for example, purchase from auctions, dealers, public agencies and private agencies and citizens. Prior to purchasing, an analysis will be completed which documents that the purchase price is considered fair and reasonable and is in the best interest of the City.

CITY DIRECT PURCHASE OF MATERIALS FOR USE IN CONTRACTED CITY PROJECTS

It may be to the City's advantage to directly purchase materials, components, or systems to be used in a construction project. This allows savings in sales tax (the City is tax-exempt, contractors are not), and the contractor's mark-up. If so doing, the construction contract shall contain language to make the contractor responsible for expediting, receiving, storing, protecting, installing the goods, arranging for training of staff by the supplier, and providing the suppliers' and manufacturers' warranties. Also, long-lead-time items may be ordered by the City, while the bidding/contract negotiation process is ongoing.

In the event the City elects to make direct purchases, the responsibilities of both, the City and the Contractor relative to direct purchase items shall be governed by the terms and conditions contained herein, in the solicitation and in the contract and in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities. FS Section 212.08(6).

OTHER NON-COMPETITIVE PURCHASES:

The following items can be paid by PO, FPO, pre-payment procedures or paid directly by Finance

- Governmental Contracts: Usage of other City resources, such as Environmental Services for parking lot improvements, may be exempt from bidding practices, unless competition is desired;
- Resale: Items for resale, such as those being marketed by an enterprise function, shall be exempt from bid requirements;
- Copyrighted Materials: The purchase of educational tests, textbooks, printed instructional materials, films, filmstrips, videotapes, disk or tape recording or similar licensed or copyrighted audio-visual materials and computer software to include Software as a Service products, periodicals, and other copyrighted materials are exempt from competitive solicitation requirements. This exception applies when purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency or a recognized educational institution;
- Software/Technology Maintenance and Support renewal fees for existing software or technology licenses;

- Acquisition of Real Property, such as land, easements, rights-of-way, existing buildings, structures, or improvements, resulting from negotiations and approved by the City Council;
- Court-ordered fines and judgments, resulting from litigation;
- Exceptional disbursement as authorized by the City Council;
- Court-ordered fees, resulting from the judicial process, processed by the Clerk of the Court, and recorded against the budget for such fees;
- Cash transfers and investment transactions for fiscal management purposes, recorded against general ledger accounts;
- Accrued or current liabilities already charged against the budget, recorded against general ledger accounts;
- Debt service payments charged against budgetary accounts as authorized by the City Council;
- Postage or other delivery services;
- Utility refunds;
- Employee deduction;
- State or County license and permit renewals;
- Auto Tags;
- Refunds of current or prior year revenues charged against budgetary accounts;
- Grant disbursements to federal, state, or local government agencies, or to private groups or agencies;
- Insurance including but not limited to liability, property, medical, and workers compensation insurance or payments from any loss fund established for such purpose;
- Dues and memberships in trade or professional organizations, subscriptions for periodicals, advertisements, copyrighted material, part-time, authorized hospitality expenses, and fees and costs of job-related travel, seminars, tuition registration and training as allowed by the City budget;
- Legal services, expert witnesses, court reporter services, and all other related expenses of claims and/or litigation;
- Consultant Services, other than those regulated by § 287.055, Fla. Stat.;
- Title insurance, title commitments, title searches, and ownership and encumbrance searches; and
- Transactions by Inter-local Agreement.

WAIVER OF COMPETITIVE SELECTION REQUIREMENTS.

The City Council may waive the written quote and formal bidding requirements where solicitation of bids is deemed not to be in the best interest of the City taking into consideration cost, delivery time, prior dealings with the vendor or product, consistency of product use, compatibility of product with existing equipment and such other considerations as deemed appropriate by the City Council.

If the City Council elects to waive the competitive selection requirements of this article for a procurement in any instance, the Council will state its findings as to why the waiver is in the city's best interest.

A waiver of the competitive selection requirements of this article does not constitute a waiver of competitive selection requirements for public works projects governed by F.S. §§ 255.103 or 255.20. Any required waivers from the application of F.S. §§ 255.103 or 255.20 will be in strict accordance with those statutory provisions unless the city Council adopts an emergency ordinance.

SECTION XVI PURCHASING CARD

PURPOSE: The purchasing card program is a delegation of procurement authority by the Finance Department to the Departments. Each Department Head must control the proper use of his or her Department's cards.

PURCHASING CARD ADMINISTRATION: Each Department Head shall determine who in their Department should have a City purchase card. The "Purchase Card Form" is used to apply for a purchase card. The application must be completely filled out and signed by the appropriate Department Head. Requests that exceed any of the established "Cardholder Controls" must have the City Manager's approval. New cardholders will receive training and must sign a "Cardholder Agreement" signifying they understand and accept the responsibility associated with the purchase card.

MAKING CHANGES TO THE PURCHASING CARD: The "Purchase Card Form" is also used to make changes to the purchasing card. Any changes to "Cardholder Controls" will require the Department Head's signature approval. Any change to "Cardholder Controls" that exceed the established amounts must have the City Manager or designee's signature of approval. Changes to fields other than "Cardholder Controls" can be made with only the cardholder's and the approving official's signatures.

TRANSFERING THE CARD BETWEEN DEPARTMENTS: The purchasing card can be transferred from one Department to another with the receiving Department Manager or Department Head's approval. If an employee moves to a new Department, the losing Department is required to notify the Finance Department of the transfer by email. The Finance Department will verify approval of the card transfer with the receiving department. Once approval is received the card will be moved to the receiving department's group.

LOSING THE CARD ACCOUNT: If an employee leaves the City or no longer requires a card, the Department Head is responsible for collecting the purchasing card. The card should be cut in half once and submitted to the Finance Department. The Finance Department will contact the issuing Bank to close the account. If the card cannot be collected from the terminated employee, treat the card as a "Lost or Stolen" card and follow those procedures.

LOST OR STOLEN CARDS: If a card is lost or stolen, immediately notify the issuing Bank and the Finance Department. The cardholder must also notify his approving official.

CARDHOLDER SPENDING LIMITS:

1. The delegation of purchasing authority that the card provides to each cardholder sets the maximum dollar credit limit amount per month. Each time a cardholder makes a purchase with the card, the limit will be checked, and the authorization request will be declined should the purchase amount exceed the available credit amount. The maximum credit limit amount is set at \$10,000 and cannot be exceeded without the approval of the City Manager or designee. Each cardholder's credit limit is recommended by the cardholder's supervisor on the "Purchase Card Request Form" and must be approved by the cardholder's Department Head and by the Purchasing Card Program Administrator. Requests for a credit limit exceeding \$10,000 must be justified in writing and approved by the City Manager or designee prior to submission to the Finance Department.
2. The City's single transaction limit for goods is set at \$5,000. Single item purchases exceeding \$1,000 but under \$5,000, are allowed with supporting documentation.

3. The single transaction purchase limit is defined as the total transaction dollar limit for a single transaction. The maximum single purchase limit is set at \$5,000 and cannot be exceeded without prior coordination with the Finance Department and approved by the Finance Director. Each cardholder's single purchase limit is recommended by the cardholder's supervisor on the "Purchase Card Request Form" and must be approved by the cardholder's Department Head and by the Finance Department Administrator (or designee). Finance in conjunction with the Department may change the single transaction limit based on operation. Requests for a single purchase limit exceeding \$5,000 must be justified in writing and approved by the City Manager prior to submission to the Finance Department.
4. The City's Emergency Operation Center will designate personnel involved during declared emergency. Limits of designated cardholders will be increased as necessary for recovery efforts. The maximum credit limit amount is set at \$250,000. Purchases made with emergency purchase cards must follow emergency purchasing procedures.
5. The Finance Department may use the P-Card as a payment method to pay for any invoice, in any amount. Any payment over \$50,000 will require the City Manager's prior approval.
6. Fleet may exceed single transaction limits of \$5,000 on sole source/standardized items related to Fleet Maintenance items only, with supporting documentation.

PURCHASING CARD USE:

1. The purchasing card is to be used for **CITY PURPOSES ONLY**. The purchasing card may be used for all legitimate City purchases unless specifically prohibited in this section. The City is exempt from paying sales tax.
2. The purchasing card has the cardholder's name embossed on it and is to be used only by that cardholder only. No other person is authorized to use the card.
3. Each transaction may be comprised of multiple items, but each item(s) cannot exceed the single item purchase dollar limit. Purchases will be denied if the authorized monthly purchase limit, the single purchase limit, or the daily transaction limit is exceeded. Purchases are not to be split in order to stay within the single transaction purchase limit.
4. All items purchased over the counter to be paid by using the card must be immediately available. Back ordering is not permitted.
5. All items purchased by telephone order or from the Internet that will not be confirmed with a written order and will be paid by using the card must be delivered by the vendor within the thirty (30) day billing cycle. The order should not be placed without this assurance.
6. The purchasing card MAY NOT be used to purchase fuel, oil, personal items, telephone calls, or items listed on the "Do Not Buy List"
7. The purchasing card MAY NOT be used to make cash advances or to write VISA checks.
8. The purchasing card cannot be used to purchase like items totaling over \$ 50,000 annually. These items should be purchased using competitive purchasing procedures. The use of the purchasing card is not intended to replace effective procurement planning which enables volume discounts.
9. Cardholders must follow their department's control of funds procedures to ensure that sufficient funds are available prior to making a purchase.
10. The least expensive item that meets the City's basic needs should be sought

PROHIBITED USES OF PURCHASING CARDS:

1. Cash advances;

2. Capital Items (over \$4999.99 (with the exception of Finance staff;
3. Gasoline/Fuel
4. Any additional goods/services specifically restricted by the city's purchasing policy or the department;
5. Any purchases from a foreign supplier requiring foreign currency;
6. PayPal, Venmo, Zelle or other personal payment platforms without Finance Department's pre-authorization;
7. Personal, Family items;
8. Purchases from vendors which create a conflict of interest.

PURCHASING CARD TRAINING:

1. Initial Training: Each cardholder will be provided with initial training prior to issuance of the purchasing card. The training will cover the proper use and restrictions of the purchasing card.
2. Additional Training: Cardholders and personnel responsible for code and approving transactions will be provided training on an as needed basis. Additional training is available via recorded transcript or in person by request. In the event of a policy update, training will be offered to the effected employees.

PURCHASE CARD PROGRAM INTERNAL CONTROLS:

1. The Finance Director will establish automated card restrictions as allowed by the issuing bank's software. The Finance Director or designee will establish a City account allowing access to the issuing Bank's database. This will allow the Card Administrator to view cardholder information and statements online.
2. The Finance Department will review each transaction and supporting documentation. The Finance Department will contact cardholders directly and attempt to resolve any statement discrepancy found. If unable to resolve the issue with the cardholder directly, the Finance Department will elevate the problem to the Department Head for resolution.
3. Any incident of improper unauthorized use of the card or non-compliance to City policy shall be immediately reported to the Personnel Director and employee Department Director.

PURCHASE TRANSACTION DOCUMENTATION:

All purchase transactions fall into one of two categories; face to face (i.e., over the counter) or remote (i.e., telephone, internet or fax).

1. FACE-TO-FACE: The cardholder should get a receipt for any face-to-face transaction. The receipt serves to document both the order and receipt of goods/supplies.
2. REMOTE: The cardholder must document the order when it is placed. Items purchased by telephone should be documented by keeping a log of orders (a phone log). A log entry is not required if the order is documented some other way, such as a fax back confirmation or a web page printout. When the goods are received, the packing slip must be matched to the log (or confirmation) showing the order.

PREPARING TRANSACTIONS FOR PAYMENT:

Transactions must be reviewed, substantiated, and approved with the attached receipt in the Online System within five days of posting transaction date.

1. **REVIEW:** The cardholder shall review the transaction for correctness. Ensure all charges are legitimate and no sales tax was charged.
2. **SUBSTANTIATE:** Each transaction should be documented with a detailed receipt. Provide account numbers for each transaction in the City's system. In notes put a detailed description of the purchase.
3. **APPROVE:** The approving Director or designee (usually the cardholder's immediate supervisor) or designee shall review each transaction and check all documentation. Any errors, sales tax issues or questionable purchases must be resolved before submitting to Finance. The Approving Official's review of transaction certifies all transactions as legitimate expenditures of City funds. *
4. **MISSING DOCUMENTATION:** The cardholder is responsible for providing required documentation. If a receipt is lost, attempt to obtain a duplicate. If a duplicate cannot be obtained, prepare a memo that includes all the information normally found on the receipt and a brief explanation for the lost documentation. Continual abuse may result in loss of the card and disciplinary action.
5. **DISPUTED CHARGES:** If the cardholder questions a charge, the cardholder shall contact the vendor directly and attempt to reach resolution. If the cardholder reaches an agreement with the vendor, there is no dispute. If the vendor refuses to acknowledge the error or will not issue a credit, the cardholder must fill out the issuing bank's "Purchase Card Disputed Charge Form" and send it to the Finance Department. The bank will then adjudicate the disputed charge. If the charge is fraudulent, the cardholder must contact the bank, the phone number is listed on the back of the card. *

*Transactions still need to be coded and approved. Credits will be issued.

"DO NOT BUY LIST"

The following items may not be bought using the purchasing card. A requisition and purchase order must be used.

- Telephone calls
- Cash advances
- Personal items (i.e., items for your own use)

*IT will purchase any computer related equipment or equipment that interfaces with City computers. Exception to using the Purchasing Card for computer related equipment or software purchases are made by MIS to support operational requirements.

SECTION XVII VENDOR COMPLAINTS AND DISPUTES (PROTESTS)

PURPOSE: The City of Edgewater encourages prompt and fair handling of all complaints and disputes with the business community. In an effort to resolve disputed matters in an equitable manner, without fear of retribution on the part of the vendor, the following procedures are adopted:

DEFINITION: A formal objection or disapproval issued by a vendor.

PROCEDURE: The Finance Director or his/her representative shall post a tabulation of competitive

sealed bids/quotes along with the intended award recommendations on the City's bidding services website.

All awards under \$50,000 will not be subject to protest. For awards of \$50,000 or greater, only rejected bidders or quoters who were the apparent lowest bidder/quoter and the second apparent lowest bidder or quoter shall have standing to protest a rejection of the bid, quote or contract award, respectively. *All* proposers responding to a RFP may protest the proposal selection.

Pursuant to Florida Administrative Code, Chapter 120, any person allegedly adversely affected by the decision or intended decision of award must file a written notice of protest with the Finance Department within 72 hours after posting of the bid tabulation or after receipt of notice by the City of intended award.

The nature of protest must be followed within 10 days of filing, by a formal written notice fully detailing all elements, which promulgated the protest. This notice must be delivered to the Finance Director or his/her representative and must contain the bid/quote/proposal number and the nature of the complaint.

After notice is provided, the Finance Director will gather evidence and discern facts and make a recommendation to the City Manager. The City Manager will present his recommendations to the governing body that will make the final decision on the matter. All decisions of the governing body are final.

Failure to observe any or all of the above procedures shall constitute a waiver of the right to protest a contract award. In the event of a timely protest, the procurement shall be halted unless the City determines award of a contract without delay is necessary to protect the interests of the City. In the event an award is needed without delay, the City Manager's findings shall constitute final administrative action.

SECTION XVIII SUSPENSION AND DISBARMENT

- A. *Authority to Debar or Suspend.* In accordance with the provisions of this Section, the Finance Director, after consultation with the City Attorney, shall have the authority to debar an actual or prospective contractor for cause from consideration for award of contracts. The debarment shall be for a period of not more than five (5) years from the date of the final determination of debarment. Upon initiation of debarment proceedings, the Finance Director, after consultation with the City Attorney, shall also have the authority to suspend an actual or prospective contractor from consideration for award of contracts pending the final debarment determination. The suspension shall be for a period of one (1) year or until a final determination with respect to debarment is made, whichever is earlier.
- B. *Causes for Debarment.* The causes for debarment shall include, but are not limited to, the following:
1. Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract.
 2. Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects its responsibility as a contractor.
 3. Conviction or civil judgment finding under state or federal antitrust statutes arising out of the submission of bids or proposals.
 4. A determination by a court, hearing officer, administrative official, or any local, state, or federal governmental entity or agency that the contractor has violated the provisions of any local, state, or federal laws or regulations.

5. Commission of any fraud or misrepresentation in connection with a bid, quotation, proposal, solicitation, or contract with the City or other public entity, whether or not leading to a conviction.
 6. Violation of a material solicitation/contract provision with the City or any other person or public entity, including, but not limited to the following:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a bid/contract;
 - b. Abandonment of a contract;
 - c. Failure to pay a contractor, sub-contractor, or material provider as required by Florida Statutes;
 - d. Repudiation of a bid/contract by failure to provide bonds, insurance, or other required certificates within a reasonable time period or otherwise repudiating a bid/contract;
 - e. Refusal to accept an addendum, agreement or contract, or to perform thereon provided such addendum, agreement or contract was issued timely and in conformance with the bid or solicitation received; or
 - f. Overall performance of a contract which has been evaluated as "poor" or "unsatisfactory".
 7. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more bids/contracts with the City or any other person or public entity; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 8. Presence of principals or corporate officers in the business or concern, who were principals or corporate officers within another business at the time when the other business was suspended or debarred within the last five (5) years under the provisions of this section or by another public entity.
 9. Violation of an ethical standard of the Code of Ethics of the National Institute for Governmental Purchasing.
 10. Any other cause or material factor which adversely affects the responsibility of a person or entity as a City contractor, including but not limited to suspension or debarment by another governmental entity for any of the causes listed in this section.
- C. *Notice of Intent to Debar.* Upon a preliminary determination by the Finance Director that cause exists for debarment, a contractor or prospective contractor shall be sent a written notice of intent to debar. Such notice shall state:
1. The reasons for the proposed debarment;
 2. The proposed length of the debarment;
 3. That the preliminary finding of cause and proposed debarment action shall become final, if a request for review is not timely filed in accordance with the provisions of subsection D below;
 4. Whether the person has been suspended pending finality of the debarment determination; and
 5. That suspended and/or debarred persons may not be considered for award or receive new contracts during the period of suspension and/or debarment.
- D. *Request for Review.* A contractor or prospective contractor that has received a notice of intent to debar may request that the proposed debarment action be reviewed and reconsidered. Such request must be received by the Finance Director in writing within ten (10) calendar days of issuance of the notice of the intent to debar. Such request for review and reconsideration shall state the basis for review and reconsideration, and shall include such documents, evidence, and other information as the requesting party deems necessary to support its position. If no request for review and reconsideration is received within the time period allowed, the determination of the Finance Director that cause exists for debarment and the proposed length of the debarment shall become final and all rights to request review or appeal shall be deemed waived.
- E. *Review.* Upon timely filing of a written request for review, the Finance Director shall review and reconsider the preliminary determination of cause for debarment, with or without a meeting or hearing with the party requesting review, at the option of the Finance Director. The Finance Director may

request information from, and speak individually or collectively to, any people or entities having information relevant to the debarment determination. The Finance Director shall render a written decision on the request for review and reconsideration, which shall include the Finance Director's final debarment decision and action taken, if any, within thirty (30) calendar days following receipt of the request.

- F. *Appeal of the Finance Director's Decision.* The final debarment decision of the Finance Director may be appealed by the person proposed for debarment to the City Manager within ten (10) days. The City Manager will present his recommendations regarding the disposition of the appeal to the City Council and the City Council will make the final decision on the disposition of the appeal. All decisions of the City Council are final.
- G. *Debarred and Suspended Persons List.* The Finance Director shall maintain a list of suspended and debarred persons. Persons which have been suspended or debarred shall be precluded from responding to solicitations or receiving awards of contracts from the City during the period of their suspension or debarment. Any bid or other response received from such a party during the period of their suspension or debarment shall be disregarded and not evaluated for potential award.
- H. *Other Remedies.* Nothing in this section shall limit the City from pursuing other legal or contractual rights or remedies against a suspended or debarred person, including but not limited to during the pendency of any proceedings related to suspension or debarment.

SECTION XIX CAPITAL ASSET TRACKING

PURPOSE: Capital asset control entails tracking, compiling and maintaining an inventory of capital assets to control losses due to negligence or theft, to provide a basis for insurance claims and identify surpluses. Capital asset records are set up to comply with Florida Statute 274.

DEFINITION: Capital assets are tangible items (e.g. land, buildings, building improvements, vehicles, machinery, equipment and infrastructure) or intangible items (e.g. easements, water rights) with original cost or value of \$5,000 or more, with an estimated useful life of at least one (1) year following the date of acquisition. Capitalization thresholds are to be applied to individual items rather than groups of similar items (e.g. desks and tables), unless the effect of doing so would be to eliminate a significant portion of total capital assets.

PROCEDURES: The Finance Department will coordinate the maintenance of the City's Capital Assets Database. Purchasing will provide copies of each purchase order that contains a purchase of a Capital Asset to the appropriate Accounting personnel. The ordering (receiving) Department must notify the Finance Department when an item is received so proper identification may be affixed, and records can be updated. All Capital Asset equipment is assigned a permanent City of Edgewater identification number, and is physically tagged or otherwise marked by the Finance Department. Records are entered and maintained for each item, and include the following information:

- Capital Asset Item Number
- Item Description
- Serial Number
- Make and Model
- Account Number
- Location and Custodian

- Payment Information: Vendor name, P.O. Number and Date of purchase
- Purchase Price
- Date of Last Inventory

The copy of the purchase order provides much of the above information. Additional information is obtained upon physical tagging of the equipment and through communication with the vendor and the Department. Finance is responsible for taking a biennial Inventory of property in their custody. The Capital Asset Property Coordinator(s) will distribute an inventory list to each Department biennially. This biennial inventory will validate all items and any item unaccounted for will require a Missing, Lost or Stolen Form to remove the item from inventory. The biennial inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled. The results of the biennial inventory will be provided to the Finance Director in an executive summary format.

SURPLUSING OF CAPITAL ASSETS: All capital assets that are obsolete, excess, or no longer needed by the owning Department/ are to be reported to the Finance Department for disposition. All items must be listed on a Request to Transfer/Declare Surplus form and submitted to the Finance Department. The Finance Department is responsible for approving the disposition of the capital assets. If the item is a transfer between Departments, the Request to Transfer/Declare Surplus Form requires both the transferring and receiving Department Director's signatures. The Capital Asset Coordinator will verify ownership, description, and identification number of the equipment on the form and approve the transfer or surplus of the item. Upon approval, a copy of the form will be provided to Finance to update the computerized inventory. The Management Information Services Division must approve the transfer of information technology equipment.

DISPOSITION OF PROPERTY: Non-capital items such as broken chairs, tables, calculators, desk accessories, books, tools, which are considered as "junk", may be disposed of via the landfill or trash by the individual department(s). Capital Assets that have identification numbers can be disposed of as follows:

1. Assets with no salvage value: Transfer/Declare Surplus form addressed to the Finance Department, signed by the Department Director and containing the identification number, description, condition and recommended disposal method (i.e. landfill disposal) of each piece of equipment. Once approved, the requesting Department must dispose of property locally.
2. Property with salvage value: Disposal must be in accordance with Florida Statute 274, after the Department has screened to see if another Department can use the Property.
3. The Finance Department will prepare the list of disposal equipment, which will be part of the City Council Consent Agenda to ensure that the list is recorded in the minutes of the City.

SECTION XX

RECEIPT OF GOODS AND MATERIALS

PURPOSE: Receiving of goods and materials confirms that the products received meet the purpose of procurement as intended.

DEFINITION: The business function that is responsible for verifying that the goods received are the goods that the organization ordered. This involves inspecting and accepting incoming shipments.

USER (ORDERING) DEPARTMENT: The department is charged with the responsibility of inspecting all supplies to determine quality, quantity and conformance with specifications and the purchase order.

The Finance Department shall have the authority to question, examine, or test the quality of materials requested or received by the department.

PROCEDURE IN DEPARTMENTS

Upon receipt of materials and after inspecting and/or testing, the department shall receive the item in the on-line system receipt-processing module. Any variation in quantity shall be noted on the system. If the quantity does not agree with the supplier's delivery ticket, the department shall notify the vendor of the discrepancy. If the materials delivered are not in conformance with specifications and are not acceptable by the department, they shall notify the vendor and file a complaint with the Finance Department by using the evaluation form and citing the reasons for withholding acceptance.

The Finance Department will take immediate action to require replacement by the supplier or otherwise take action to supply the department with the needed materials.

SECTION XXI INVOICES

PURPOSE: An invoice provides evidence of the purchase of goods and services and should include adequate detail to meet audit objectives.

DEFINITION: An invoice is a document that itemizes charges for the purchase of supplies, materials, equipment or services that have been furnished. It is how the supplier informs the City of its obligations and should contain the same basic information as the purchase order.

WHAT AN INVOICE SHOULD CONTAIN

- Purchase order number
- Date of order (if possible)
- Date of delivery
- Terms of payment (2% - 10 days, Net 30 days, etc.)
- Itemized list of materials or services rendered
- Delivery destination
- Quantities, prices, (both unit and total), terms and any other charges contained in the purchase order
- Delivery, freight charges, cartage and demurrage charges should be listed separately from the materials and supplies.
- Invoices should be submitted to the Finance Department.

WHO RECEIVES INVOICES

The purchase order details the remittance address for submittal of invoices.

- The Finance Department shall match the invoice with the on-line receipt.
- The Finance Department, after checking and reviewing the invoice, will prepare a voucher for payment.

All invoices are to be charged to the City of Edgewater and shall be forwarded to the Finance Department. If received by the department, the **original invoice** must be forwarded to the Finance Department after proper receiving has been accomplished on the on-line system. The Department Director or designee shall approve each invoice that is sent to the Finance Department. Each Department shall have on file with Finance completed authorized signer signature cards for the Director and each of their designees. The Finance Director or designee may grant certain exceptions as to the requirement for payment without an original invoice. The City does not accept two party invoices.

Unless previously agreed upon by both the City and vendor, ALL INVOICING AND payments will be as outlined in the (Local Government Prompt Payment ACT (FS 218. Part VII).

SECTION XXII VENDOR EVALUATION

PURPOSE: Vendor performance measurement is crucial to keeping good suppliers and terminating business relations with poor suppliers.

DEFINITION: The Vendor Evaluation Form should be utilized to inform the Finance Department of excellent service provision, including services performed beyond the requirements or to report any difficulties due to poor service, poor performance, poor quality, or materials not meeting specification requirements. This shall not be utilized as an expediting tool.

HOW TO PREPARE

A properly prepared Vendor Compliment and Complaint Form must contain the following information:

- Date
- Vendor name, address, and phone number
- Department and contact person
- Purchase order number
- Department Director signature
- Brief statement of **exactly** what level of service provided the vendor's performance of the services, or what the problem is, and why the product or service is unacceptable.
- All available documentation shall be attached

DISTRIBUTION

The Vendor Evaluation Form shall be forwarded to the Finance Department. Finance Department will send a copy to the vendor for their response.

GENERAL INFORMATION

The department shall be notified as to the vendor's response and any action to be taken by the Finance Department.

NOTE: Project Managers are required to submit a Vendor Evaluation at the close of all Capital Projects and are strongly encouraged to submit whenever favorable or unfavorable actions on the part of a vendor occur.

SECTION XXIII CONFLICTS OF INTEREST

PURPOSE: The City wishes to minimize conflicts of interests. Therefore, the following will be adhered to:

(Except as provided in Subsection (2) of section 11.40, Florida Statutes, as amended), No official or employee of the City, or member of the City Council shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- Any member of his or her immediate family,
- His or her business or personal partner, or
- An organization, which employs, or is about to employ, any of the above has a financial or other interest in the firm selected or considered for award. No official or employee of the City, or member of the City Council shall either solicit or accept gratuities, favors, or anything of monetary value exceeding \$25 from contractors, potential contractors, or parties to sub- agreements.

Violations of these standards of conduct may result in disciplinary action as set forth in Chapter 113, Part III, Florida Administrative Code provided that such disciplinary action does not conflict with the jurisdiction of the State of Florida Commission on Ethics.

EMPLOYEE DISCLOSURE REQUIREMENTS

All employees involved in the procurement process, including the selection, award, or administration of purchase orders, task releases, or contracts, are subject to the conflict-of-interest requirements provided in this Policy. All employees participating in subjective evaluations, such as the request for proposal processes, must complete a Conflict-of-Interest Certification and Disclosure Form prior to participating in evaluations. The Finance Department will administer Conflict-of-Interest forms.

Notwithstanding, employees must immediately disclose to the Finance Director or designee any and all situations that create or could create a conflict of interest involving any procurement, purchase, contract, or other business involving the City.

MANAGEMENT OF REAL OR POTENTIAL CONFLICTS OF INTEREST

Upon disclosure, the impacted person must refrain from participating in the selection, award, or administration of the affected contract until a determination has been made by the City as to whether the employee has a prohibited conflict of interest. The employee involved in the conflict situation will work with the employee's immediate supervisor, the City Attorney's office, and the Finance Director or designee to resolve the conflict issue in the best interests of the City. If the City determines that an employee has a real or apparent conflict of interest, the City will disqualify the employee from acting on any matter or participating in any decision(s) that could be impacted by the conflict.

Any employee that does not comply with the conflict-of-interest sections outlined herein may be subject to disciplinary action if warranted by the offense. At the point the actual or apparent conflict is made known, the City Attorney and Finance Director will review all pertinent facts and together decide the best course of action. If it is determined that the award will stand, such determination will be documented in writing and included in the Procurement File for the affected purchase or contract.

**SECTION XXIV
PROCEDURES FOR FEDERALLY FUNDED PROJECTS
THIS SECTION HAS BEEN REPLACED BY EXHIBIT “E”**

**SECTION XXIV
PURCHASING POLICY ADOPTION**

The Purchasing Policy shall be adopted by City resolution. The Finance Director and Department Directors shall review the Policy annually and submit recommendations to the City Manager for review and approval. If a change in the Policy is recommended for approval by the City Manager, the Finance Director will prepare the necessary report to Council.

Approved by the City Council of the City of
Edgewater at a meeting held on the __ day of
_____, 2025 under Agenda Item _____. Resolution
No. 20---R---

EXHIBIT “A”
NIGP Global Best Practices for Ethical Procurement



STANDARD

It is essential that public procurement professionals and stakeholders¹ adhere to a well-defined and established code of ethics. The public procurement organization should have an adopted code of ethics and require its employees to uphold the code and seek commitment to it by all those with whom they engage.

Definition

Ethical procurement prohibits breach of the public's trust by discouraging a public employee from attempting to realize personal gain² through conduct inconsistent with the proper discharge of the employee's duties.³

Element 1.1: Conflict of Interest

Public procurement professionals must:

- Avoid any private or professional activity that would create a conflict of interest or the appearance of impropriety
- Avoid engaging in personal business with any supplier representative or similar person
- Avoid lending money to or borrowing money from any supplier⁴
- Avoid any and all potential for nepotism⁵
- Avoid any overlap of duties in the procurement process⁶
- Safeguard the procurement process from political or outside influence

Element 1.2: Conduct with Suppliers

Business dealings with suppliers must be fair and transparent. Procurement must:

- Refrain from showing favoritism or being influenced by suppliers through the acceptance of gifts, gratuities, loans or favors⁷
- Safeguard supplier confidentiality
- Refrain from requiring suppliers to pay to be included on an approved or preferred supplier list
- Refrain from requesting donations of goods or services to the public entity
- Select suppliers on the basis of meeting appropriate and fair criteria
- Discourage the arbitrary or unfair use of purchasing leverage or influence when dealing with suppliers
- Avoid the exertion of undue influence or abuses of power⁸
- Treat all suppliers fair and equal

Public Procurement Practice

ETHICAL PROCUREMENT *(Cont'd)*

Element 1.3: Corruption⁹

Public procurement professionals who become aware of any corrupt activity have a duty to the profession and to their employing organizations to alert their senior management and/or elected officials. Public procurement shall not tolerate bribery or corruption in any form.

Forms include, but are not limited to:

- **Bribery** is the offering, promising, giving, authorizing or accepting of any undue financial or other advantage to, by or for any persons associated with the procurement process, or for anyone else in order to obtain or retain a business or other improper advantage. Bribery often includes (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting party, their close relatives, friends or business partners or (ii) using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government or party officials, or to employees of the contracting parties, their relatives, friends or business partners.
- **Extortion or Solicitation** is the demanding of a bribe, whether or not coupled with a threat, if the demand is refused. Procurement professionals will oppose any attempt of extortion or solicitation and are encouraged to report such attempts through available formal or informal reporting mechanisms.
- **Trading in Influence** is the offering or solicitation of an undue advantage in order to exert an improper, real, or supposed influence.
- **Laundering the proceeds of the corrupt practices mentioned above** is the concealing or disguising the illegitimate origin, source, location, disposition, movement or ownership of property and/or money, knowing that such is the proceeds of crime.
- **Nepotism** is the use of authority or influence to show favoritism to relatives or friends without merit.

Element 1.4: Business gifts and hospitality

The offer and receipt of business gifts and entertainment are sensitive areas for public procurement professionals, despite being recognized as standard private sector business practice. Public procurement organizations should develop a clear policy on accepting business gifts and procurement professionals and suppliers must comply with any such policy as well as prevailing laws. Minimal guidelines include:

- Not soliciting or accepting money, loans, and credits or prejudicial discounts, gifts, entertainment, favors or services from present or potential suppliers which might influence or appear to influence a procurement decision/ process
- Avoiding meals or other hospitality¹⁰ with suppliers¹¹

Element 1.5 Other Policies and Considerations

Ethical practices should be defined and embedded in other policies, procedures and practices which overlap public procurement. Other policies in the procurement space which will need to be considered may include the subjects of:

- Competition and anti-competitive practices
- Supplier diversity
- Supplier equality
- Corporate Social Responsibility (CSR)
- Sustainability¹²
- Anti-discrimination policy
- Transparency¹³



Element 1.6: Ensuring compliance

Ensuring compliance, focusing on high risk areas, understanding suppliers' operations and offering guidance and support when improvement is necessary or appropriate should ensure that the strategic and operational risks associated with unethical practices are minimized.

Public procurement professionals need to focus on ensuring compliance with their ethical code and the policies that it touches upon. To ensure this compliance, the focus:

- Should take place in parallel with the development of monitoring procedures
- May take time, or need to be introduced in phases
- May require prioritization of areas associated with ethical issues which might be of greater risk to the organization.

Background

Ethics are the principles which define behavior as right, good and appropriate. Employees in public service are bound to uphold certain values (See: Values and Guiding Principles). Any attempt to realize personal gain by conduct inconsistent with the proper discharge of the employee's duties is a breach of the public trust.

The value of the transactions in the procurement process along with pressures to lower costs could result in bribery, corruption and other practices which could be deemed unethical. In the public sector where goods and services are funded by public expenditure, it is imperative that procurement operates ethically, with impartiality, transparency, and professionalism.

Ethical procurement best practice starts with the employees in procurement following an ethical code which dictates their behavior and actions while conducting business. Ethical procurement practices should be extended to all stakeholders in the procurement cycle. Ethical procurement should also include an understanding of suppliers' operations and the procurement professional should offer guidance and support when improvement is necessary or appropriate.

- ¹ Any organization, group, or individual that can place a claim on the organization's resources or services or is affected by what the organization does or the services it provides (NIGP. (2011). *Public procurement dictionary of terms*. Herndon, VA: NIGP.)
- ² Gain may be monetary, and/or non-monetary in nature.
- ³ National Institute of Governmental Purchasing, Inc. (2011). *Public procurement dictionary of terms*. Herndon, VA: NIGP.
- ⁴ Adapted from NIGP. (2011). NIGP Code of ethics. Retrieved from <http://www.nigp.org/eweb/StartPage.aspx?Site=NIGP&webcode=abt-code-ofethics>
- ⁵ Form of favoritism based on acquaintances and familiar relationships whereby someone in an official position exploits his or her power and authority to provide a job or favor to a family member or friend, even though he or she may not be qualified or deserving " (Transparency International. (2009). *The anti-corruption plain language guide*. Retrieved from www.transparency.org).
- ⁶ For example: appropriate checks and balances should be in place so that the requisitioning, ordering and receiving functions do not report to the same supervisor.
- ⁷ Ibid.
- ⁸ It is important to ensure compliance with all applicable legislation, such as restraint of trade and anti-trust legislation, which address anticompetitive practices and abuse of dominant position.
- ⁹ Adapted from ICC. (2011). ICC rules on combating corruption. Retrieved from http://www.iccwbo.org/uploadedFiles/ICC/policy/business_in_society/Statements/ICC_Rules_on_Combating_Corruption_2011edition.pdf
- ¹⁰ If engaging in meals or hospitality the procurement professional should pay for meals as frequently as the supplier and be mindful of any policy/ law which limit dollar value of such meals and/ or hospitality.
- ¹¹ Adapted from NIGP. (2011). NIGP Code of ethics. Retrieved from <http://www.nigp.org/eweb/StartPage.aspx?Site=NIGP&webcode=abt-codeofethics>
- ¹² Inclusive of economic, social, and environmental considerations as they relate to the procurement process.
- ¹³ Including conflict of interest disclosures for procurement staff and stakeholders involved directly in the procurement process.

EXHIBIT “B”
FLORIDA DEPARTMENT OF TRANSPORTATION
GUIDELINE FOR ESTABLISHING CONSTRUCTION
CONTRACT DURATION
December 2021

FLORIDA DEPARTMENT OF TRANSPORTATION



***GUIDANCE FOR ESTABLISHING
CONSTRUCTION CONTRACT DURATION***

DECEMBER 2021

Purpose

To provide general guidance and outline key influencing factors to be considered for determining construction contract duration for Florida Department of Transportation (FDOT) construction projects.

Authority

Section 20.23(3)(a), 334.044(2), 334.048(3), and 337.18, Florida Statutes

Background

The FDOT outsources all its construction projects in the Work Program using contractors. This approach places FDOT in an oversight capacity, managing the construction operation through contract administration. A vital aspect of a successful contract administration program is the accountability provided by established and agreed-upon contract durations.

By advertising construction contract durations in advance, bidding contractors are made aware of the time element for a project and must prepare their bids accordingly. Since the risk associated with bidding on transportation projects is based on numerous factors outside the control of the FDOT (for example, site conditions, availability of materials, constrained work hours, limited equipment staging areas/work zones, etc.), the proper and fair establishment of appropriate contract duration is critical.

Contract duration is the maximum time allowed in a construction contract for completion of all work contained in the contract documents. Contract duration is established upon receipt of the contractors bid blank regardless of the original estimate of time by the Department. Contract duration is a frequently debated topic during active construction projects, most often arising when there is too much, or too little time given in the contract. Since multiple parties are involved in the execution of construction contracts, the possibility for disagreement can arise when one party or another feels constrained by the amount of time allotted.

If excessive contract duration is allowed, then the traveling public may become inconvenienced for a longer time than necessary and the contractor may not appear to be aggressively pursuing the work. There are many reasons for a project to appear dormant, such as weather limitations, holidays, material curing times, material availability, material arriving late, etc. However, in many cases, either allocation of excessive time by the scheduler or poor contractor scheduling of construction operations could be considered root causes of excessive time.

Conversely, if insufficient contract duration is allowed then contractors may need to bid a higher price to accommodate the risk in accelerated construction practices. For instance, a contractor may need to increase the number of active crews working simultaneously on a project, resulting in higher labor costs that are then passed to the FDOT through higher bid prices. Too little contract duration may also negatively impact the traveling public by not allowing a more sequential construction workflow and forcing contractors to substantially increase the work zone with simultaneous operations. This may also result in contractor claims for added cost and time.

The percentage of construction projects completed on time each fiscal year is a System Performance Measure for FDOT; the target being 80% or more of all projects completed within 20% of the original scheduled estimate. Since this measure is inclusive of all projects, regardless of size, a small project consisting of 100 contract days has the same performance impact as a much larger project consisting of 1600 contract days. In fact, smaller projects can have an outsized effect on FDOT's performance report, since small contract duration increases on shorter duration projects have a greater likelihood of negatively impacting the target System Performance Measure.

Considering these and other influencing factors, proper selection of contract duration on a project-by-project basis allows for optimization of construction engineering costs and resources which will result in accurate accountability reporting statewide.

In addressing the need for completing critical construction projects where it is important to minimize traffic inconvenience and delay, FDOT may apply alternative contracting methods such as Bonuses, Cost+Time bidding, and Incentive/Disincentive specifications for early completion. The contract duration estimation should consider how these alternative contracting strategies will impact the duration.

Primary Factors Impacting Contract Duration

Numerous factors continuously present greater complexity for FDOT construction projects. This complexity must be considered as contract duration is allocated per project. Some of the considerations for increased complexity are listed below.

- FDOT is committed to delivering projects with the least amount of disruption to travelers' accustomed routes. Accordingly, contractors must maintain traffic on as many existing facilities as safely possible, often working adjacent to operating lanes.
- To minimize impacts to urban businesses, residents, and travelers, FDOT has enacted the **Urban Reconstruction Policy** (Topic No.: 000-700-003) with the intent of using a "train" construction technique to limit the size of construction work zones.
- Traffic volumes on most state roads continue to increase, thereby creating a greater impact on the traveling public in both safety considerations and cost.
- External factors (utility agency/owners, environmental permitting constraints, increased public presence) place restrictions on construction workflows.
- Location of the project in proximity to external stakeholders, for example (but not limited to) Transit, Aviation, Freight/Logistics Facilities, School Zones, and Emergency Response facilities, could require additional coordination. This coordination should be accommodated for within the contract duration.

Considering these sources of complexity, the following are primary factors that have a direct impact on production rates and should be considered during contract duration estimating:

I. Construction Type

New Construction: Projects that are typically considered New Construction consist of adding capacity or replacement of existing features. For example, the scheduler should consider whether the facility to be worked on will require a full closure/detour or excavation, and how that may impact construction access. Conversely, consideration should also be given to potential time savings if the contractor is not working adjacent to live traffic.

Since these types of projects are frequently the most complex that FDOT produces, there can be numerous construction operations. It is incumbent on the scheduler to determine which elements are compatible and can be overlapped vs. which must occur sequentially. For example, excavation must occur before storm sewer installation, however, a project's length may be long enough to allow for multiple work zones with phasing that allows for excavation and placement of storm sewer simultaneously. This has the benefit of creating accelerated production duration for both excavation and pipe placement.

Reconstruction: Reconstruction projects will fully replace existing roadway features generally "in kind". These types of projects will not use new alignments. However, since the existing roadway may be fully obliterated, there may be a strong likelihood of detours, lane shifts, or diversions. The need to minimize disruption to the traffic flow may be more challenging than for New Construction.

Widening: Widening projects add new lanes adjacent to existing lanes. Widening projects are subject to the disruption of working adjacent to live traffic but present the benefit of not needing to actively maintain an alternate route/detour.

Resurfacing, Restoration, and Rehabilitation (RRR) / Minor Projects: Resurfacing projects may have faster production rates than Reconstruction projects under certain conditions, however, consideration must be given to elements in the scope that could result in slower production. For instance, a RRR project may have drainage improvements or signal replacements in the scope of work with contract duration that may mirror that of a New Construction project.

Minor projects (sidewalk additions, drainage improvements, turn lane additions, etc.) often have much simpler construction workflows. However, these projects may expose FDOT to a greater likelihood of time overruns if not accounted for in the contract duration computation. Additionally, smaller projects may suffer from a reduced economy of scale from lower quantities. As a result, it may be advantageous to assume slower production rates to dispel the increased risk.

II. Utility Presence

- A. Underground facilities: The presence of underground utilities creates a potential for conflict with any below-grade construction work. The scheduler must account for:
- The type of work being done (excavation, drainage placement, drilled shaft foundations, etc.).
 - The Utility Agency/Owner (UAO) itself and any governing criteria for coordination (such as gas mains or buried power lines with protection zones, sanitary force main vs. gravity line, fiber optics, etc.). There may be regulatory or legally binding minimum separation limits between a specific roadway operation and the UAO's facility that would impact construction efficiency.
 - Any specific requirements outlined in the Utility Work Schedules (UWS) for each project.
 - The type of material underground utilities is cased in and their age, or condition. (HDPE, PVC, galvanized steel, copper, etc.)
- B. Overhead Surface facilities: Overhead facilities (including power transmission or distribution lines) require individual handling as well, due to regulatory constraints under OSHA or NESC. These regulations will limit the type of equipment to be used and the proximity to be maintained between the construction operation and any live lines. A UAO may agree to de-energize their lines for a specified timeframe, but that may require accelerated construction practices that will be reflected in rapid production rates and increased costs.
- C. Utility Work by Highway Contractor Agreement (UWHCA): If the project contains a UWHCA, it is incumbent on the scheduler to accommodate that phase of construction and ensure that the roadway project construction phasing is compatible with that of the UAO.

III. Temporary Traffic Control Complexity

- A. Urban Reconstruction Policy: FDOT's need to minimize disruptions for urban locations during construction and remaining sensitive to the needs of UAO's and adjacent businesses, and residential property occupants requires slower production rates to accommodate a reduced work zone along with more Temporary Traffic Control (TTC) phases. Contract duration will need to be extended to reflect this minimization of disruption and the likelihood of numerous smaller work zones.
- B. Lane Closure Restrictions: The scheduler must confirm whether any lane closure restrictions are applicable and adjust production rates accordingly. This involves both a review of Lane Closure Analyses during design, and any local agency or community-specific restrictions which will reduce the available work hours (for example, school zone

pickup and drop-off times, large employment centers with peak hour arrival/departure, retail establishments receiving truck deliveries, etc.)

- C. Number of Phases:** Many factors influence whether there may be numerous construction phases. Consideration should be taken by the scheduler for the effect multiple phases can have, including the potential for reduced production rates due to phasing and potential schedule lag due to mobilization between phases.

IV. Import of Material/Offsite Hauling

The need to import materials (such as borrow fill) will add time as compared to projects with locally available material. The scheduler will likely add time on a project with net imported fill as opposed to a project which seeks to balance cut and fill. Additionally, the removal of unsuitable or stockpiled material will require added time.

V. Seasonal Factors

Schedulers must gauge whether a project may be impacted by seasonal factors including, but not limited to:

- Summer rainy season/hurricane season.
- Tourist destinations during peak travel times.
- Potential cold weather impacts during winter that may not allow asphalt or pavement marking placement until surface temperature is acceptable.
- Protected species nesting seasons or other environmental season-based factors.
- Special events and holidays will vary by location and must be accounted for.

VI. Geotechnical Considerations

In addition to potentially unsuitable materials, geotechnical factors that may cause an impact include, but are not limited to:

- A high-water table may require more time-intensive subsurface processes such as the installation of wellpoints to temporarily lower the water table during excavation (dewatering). This typically effects production rates of any subsurface work activities.
- Hard pan layers or the presence of cap rock may require more labor-intensive excavation and pile driving processes.
- A location with a high level of clay will likely reduce production rates due to soil characteristics as opposed to a location with higher sand presence.

VII. Functional Classification

The impact of the roadway context plays a significant role in contract duration.

- Urban Construction is anticipated to require longer durations. The potential of night work could be beneficial to avoid disruption of daytime businesses but may require additional time. Conversely, night work may be overly disruptive in residential areas, and might not be allowed.
- Limited Access Construction are potentially faster overall, given the reduced number of access points. However, Limited Access facilities could possibly have more complex geometrical considerations. There might be additional restrictions for lane closures and allowable work hours due to high-speed vehicle travel and freight considerations.
- Rural Construction may allow for faster production due to less impact on residents and businesses. Utility involvement is likely to be less impactful as well. However, rural conditions could also present additional time constraints for environmentally sensitive areas.

VIII. Environmental Factors

Environmental permit conditions provided by regulatory agencies are contractual obligations and must be honored by the scheduler. This may apply to areas such as wetlands that require more diligent sediment and erosion control measures and are subject to periodic inspection and acceptance by regulators. This effort may limit production rates.

Protected Species and associated habitats often have specific requirements. The scheduler must consider if an identified nest requires observation/protection during a nesting season and whether the project must have a delayed start or if multiple segmented work zones may be needed to avoid full work stoppage. Special attention should also be given for projects containing environmental commitments made during the planning and design phases. Commitments related to protected species or critical habitat areas often involve the use of construction special provisions that may limit the timing and/or frequency certain work activities can occur. This should be considered in the overall duration estimate of the effected work activities.

Other Factors Impacting Contract Duration

The proper allocation of contract duration is further influenced by factors that are inherent in most construction contracting.

- Establishing Controlling Items of Work (which set the Critical Path).
- Acquisition of Materials, particularly long lead items that require shop drawings or must be fabricated specifically for the project.
- Curing Times or Waiting Periods as defined in the Specifications.

- Coordination with adjacent or nearby projects.
- Innovative Practices/Techniques, particularly if FDOT approval is required.
- Time associated with evaluating Cost Savings Initiatives.
- Review Times, Approvals, or Oversight.

The application of written procedures for determining contract duration is important so production rates and other considerations are applied uniformly throughout the State. This document should be used in conjunction with the procedures in the **Construction Project Administration Manual (CPAM), Section 1.2** that addresses how to classify projects based upon appropriate factors such as high traffic volumes, projects with incentive/disincentive clauses, etc.

For most projects, the essential elements in determining contract duration include: (1) establishing production rates for each controlling item; (2) adopting production rates to a particular project; (3) understanding influencing factors described in this document; and (4) computation of contract duration with a progress schedule.

I. Establishing Baseline Production Rates

A production rate is the quantity produced or constructed over a specified time. Estimating realistic production rates is important when determining appropriate contract completion time. Production rates may vary considerably depending on project size, geographic location, and rural or urban setting, even for the same item of work. Production rate ranges should be established in the State's written procedures based on project type (grading, structures, etc.), size, and location for controlling items of work.

In establishing production rates to be used for determining contract duration, an accurate database should be established by using normal historical rates of efficient contractors. One method of establishing production rates is to divide the total quantity of an item on previously completed projects by the number of days/hours the contractor used to complete the item. Production rates based upon eight-hour crew days or per piece of equipment are recommended. Production rates developed by reviewing total quantities and total time are not recommended as they may result in misleading rates which tend to be low since they may include startup, cleanup, interruptions, etc. Production rates should consider all of the work outlined in the Specifications for each item.

The most accurate data will be obtained from site visits or review of project records (i.e., field diaries, daily logs, site manager, and other construction documents) where the contractor's progress is clearly documented based on work effort, including work crew make up, during a particular time frame. A data file based on three to five years of historical data (time, weather, production rates, etc.) should be maintained.

The production rates used should be based on the desired level of resource commitment (labor, equipment, etc.) deemed practical given the physical limitations of the project. Representatives of the construction industry are also usually willing to assist in developing rates and time schedules. Rates should be updated regularly to assure they accurately represent the statistical average rate of production in the area.

Some jurisdictions apply production rate data taken from some of the published rate guides. This data may be useful as guidance; however, the relationship of these production rates to actual highway construction projects may be difficult to correlate.

Production rates should reflect per hour per day on a 5-working day basis. A conversion factor of 1.4 should be applied to the number of days for each activity to reflect a 7-day work week. Non-workdays, such as holidays or special events, should not be programmed into the scheduling software. Non-workdays will be granted per Specifications Section 8, unless the contract is modified to address differently.

II. Establishing Project-Specific Production Rates

Before time durations for individual work items can be computed, certain project specific information should be determined, and some management and engineering decisions made. The relative urgency for the completion of a proposed project should be determined. The traffic volumes affected as well as the effect of detours should be analyzed. The size and location of the project should be reviewed, in addition to the effects of staging, working double shifts, nighttime operations, and restrictions on closing lanes. The availability of material for controlling items of work should be investigated. For example, it might be appropriate to consider the need for multiple crews on a specific item to expedite the completion when there are exceptionally large quantities or when there is a large impact on traffic.

Procedures to accelerate project completion should be considered when construction will affect traffic substantially or when project completion is crucial. This is especially important in urban areas with high traffic volumes. When accelerating contract duration for time sensitive projects, production rates should be based on an efficient contractor working more than eight hours per day, more than five days per week and possibly with additional workers. The development and application of a separate set of production rates for critical or time-sensitive projects is recommended.

III. Computation of Contract Duration - Develop a Progress Schedule

The contract duration for most construction projects can be determined by developing a progress schedule. A progress schedule shows the production durations associated with the chosen production rates for the items of work. The time to complete each controlling item of work included in the progress schedule is computed based on the production rates applicable to that project. Items should be arranged by chronological sequence of construction operations. Minor items that may be performed concurrently should be shown as parallel activities.

When developing a project schedule, the start and end dates for each controlling item needs to be based on the earliest date for which work on that item will begin and how long it will take to complete. The earliest start date for each activity will be determined by the completion of preceding activities and should allow for the fact that some activities can begin before the preceding activity is entirely completed. Additional time should also be allowed in the contract for initial contractor mobilization.

Contract Duration Determination Techniques

Contract duration determination techniques generally employ bar charts or Critical Path Method (CPM) strategies. These techniques are briefly described below.

I. Bar Charts

Bar charts or Gantt charts are graphical representations of projects with specific completion dates and activities. Bars or lines are drawn proportional to the planned duration of each activity.

A brief description of the procedure used to develop a bar chart to determine contract duration is below.

- The first step in developing a bar chart is to break a project down into separate activities or operations necessary for project completion.
- Once all the activities necessary to complete a project have been listed, the duration and completion date of each activity needs to be determined based on production rates.
- With this data established, the bar chart can be prepared. A line or bar is drawn on the chart showing the time when work will be performed for each activity. The resulting diagram will represent a project, showing when each activity will be undertaken and completed.
- With bar charts, the progress of a project may be monitored for each activity by drawing a bar or line below the original scheduled performance to show the actual duration for each activity as it is completed.

Advantages of using Bar Charts include:

- Bar charts are simple to develop and easy to understand, and they offer a good method of determining contract duration.
- Bar charts are scalable. In fact, bar charts are used frequently to provide a visual representation of a CPM methodology (as discussed further below), although this is not a requirement.

Disadvantages of using Bar Charts include:

- They do not show the interrelationship and inter-dependency among the various phases of work. Bar charts are difficult to properly evaluate when construction changes occur. Also, controlling items are shown in the same manner as minor items, thus making it more difficult to determine which items control the overall time progress of the project. The use of bar charts is not recommended for contract administration and project management of large or complex construction projects. In this case, a network diagram is more advisable.

II. Critical Path Method (CPM)

CPM scheduling techniques focus on the relationship of the critical activities, specifically, those which must be completed prior to starting other activities. Working from the project's beginning and defining individual project tasks along with the number of days to perform each task, a logical diagrammatic representation of the project is developed.

A CPM schedule depicts which tasks of a project will change the completion date if they are not completed on time. The evaluation of critical tasks allows for the determination of the time to complete projects. Because of the size and complexity of most projects, this method is most often applied using a computer software program. Within the CPM software, the ability to use a Program Evaluation Review Technique (PERT – commonly displayed as a network diagram) provides a breakdown of each activity to boxes. This enables the user to view the connection of relationships to each activity. CPM software can also display the contract duration in a bar chart view as well.

The critical path is the longest sequence of tasks that must be completed to successfully conclude a project, from start to finish. In other words, while many activities may occur on a project, the critical path is the specific sequences of activities that will have the highest likelihood to directly impact the overall contract duration. The critical path should not include schedule float on its sequence of activities.

A brief description of the procedure and general considerations used to develop CPM scheduling for contract estimate is below.

- The first step in applying the CPM method is to break a project down into separate tasks or operations necessary for project completion. Each of these separate operations or processes is called an activity. The completion of an activity is called an event.
- Once all the activities necessary to complete a project have been listed, the relationship of these activities to one another needs to be determined. In some instances, several activities can be undertaken concurrently, and at other times, certain activities cannot be undertaken until others have been completed. Generally, when determining the sequence of operations, some questions need to be asked such as: "What needs to be done before proceeding with this activity" or "what can be done concurrently?" Every activity has a definite event to mark its relationship with others with respect to completing a task.

- In working with this procedure, a diagrammatic representation of the project is developed showing the correct sequence and relationship of activities and events. Each activity is shown as an arrow leading to a node, which indicates the completion of an event or the passage of time. The start of all activities leaving a node depends on the completion of all activities entering a node. Therefore, the event represented by any node is not achieved until all activities leading to the node have been completed. The resulting diagram will be a schematic representation of a project, showing all the relevant activities and events in correct sequence.
- An actual time can be set to each activity based on production rates and application of other appropriate influencing factors. The time to complete each activity is then shown on each arrow to indicate the duration. The "early start" for each activity is the earliest point in time that an activity can start, provided that all preceding activities have finished. This is not necessarily the point in time in which it will start; however, it is the *earliest* time that it can start. The "early finish" for an activity is merely the duration of the activity after its early start. As is the case with the "early start," this is not necessarily the point in time that the work represented by the activity will be over but is the earliest point in time that it can occur. A "finish" date in CPM is the first day after the physical completion of the activity. The completion time of a project is the sum of the longest time path leading to completion of the project.
- The optimum time and cost for performing the project can be evaluated by assigning resources (such as equipment, labor hours, and materials) to each activity. The diagrammatic representation of the project then provides a means to evaluate the costs incurred with respect to the completion of specified activities.

Advantages of using CPM include:

- It is an accurate technique for determining contract duration and verifying that the project can be constructed as designed with identified construction sequences.
- It is a useful tool for project managers in monitoring a project, especially when dealing with relationships of work items with respect to time.
- Activities responsible for delays can be identified and corrective measures to keep a project on schedule can be determined.

Disadvantages of using CPM include:

- The CPM requires experienced and knowledgeable staff to be used effectively.
- It requires regular updates to assure that the contractor's operation is accurately represented.

Other Project Considerations

Construction duration on certain projects such as lighting or signalization may be governed by the long lead-time necessary to obtain materials. To minimize traffic disruption, the contract may specify a start date several months after the notice-to-proceed, but the contractor should be limited to a relatively short on-site time. This may be accomplished by including in the contract a "conditional notice-to-proceed" clause which would allow a specified amount of time to purchase and assemble materials followed by issuance of a full work order which would be issued upon expiration of the assembly period or sooner, upon the contractor's request.

Delayed or flexible notice-to-proceed dates may be appropriate for certain projects where the ultimate completion date is less critical than other factors. The contracting agency may wish to provide a notice-to-proceed window to increase the probability of a competitive bid where only a limited number of contractors are available to perform the work. Such projects may include:

- Projects that consist of specialized work (seal coats, highway planting, pavement grooving or bridge painting) where many of these projects are being advertised within a short timeframe.
- Projects with a very limited number of working days.
- Building projects.

This allows the contractor to schedule this contract with consideration of other work schedule within the same general timeline. Net benefits include lower project inspection cost and a minimal disruption to traffic. An option that may be applicable to some projects is dividing a project into phases with each phase having its own completion date. This may be applicable when coordinating with other projects or activities in the area to meet tight deadlines.

Basis of Production Rates

FDOT publishes a compilation of statewide production rates for schedulers guidance and use. Although this list is extensive, it may not include every production rate relevant to a particular project. Other sources may need to be perused to achieve the required rates for a particular scope of work within that contract.

The production rates are divided into 3 categories: low, average, and high. The numerous considerations and influencing factors outlined in this guidance document should be used to assess which range of rates should be used for a specific project. The individual scheduler's knowledge and experience on similar projects, local site conditions, and known construction constraints should also be used to the greatest extent possible. Under special or unique project circumstances, the range of production rates can be exceeded.

General examples of influencing factors used to determine the use of low, average, and high production rates are briefly discussed below. Typically, these considerations will only affect those rates associated with the specific work activity that could be impacted by the specific factor(s).

I. Low Production Rates

- Urban project location.
- Large numbers of intersections and driveways.
- High traffic volumes, complex temporary traffic control.
- Constrained working space/work zones.
- High utility presence, large number of known utility conflicts.
- Known natural environment constraints such as high groundwater or challenging topography.
- Other known environmental constraints such as time-affecting PD&E commitments, need for routine on-site inspections/consultations, etc.

II. Average Production Rates

- Suburban/rural project location.
- Fewer intersections and driveways.
- Low to moderate traffic volumes, less complex temporary traffic control.
- Less constrained working space/work zones.
- Low to moderate utility presence, few known utility conflicts.
- Low to moderate natural environment constraints.

III. High Production Rates

- Rural or limited access facility.
- Very few intersections and driveways.
- Low traffic volumes, basic temporary traffic control.
- Few to no constraints on working space/work zones.
- Low utility presence, few to no known utility conflicts.
- Few to no natural environment constraints.

Additional Reference Material

The website linked below provides the following scheduling information available for download and use:

- CPAM Chapters 1.2 & 2.1
- FDOT Utility Relocate Schedule Manual
- Guidance for Establishing Construction Contract Duration
- Production Rates – Statewide
- Production Rates Estimator Tool
- Techniques for Manually Estimating Road User Costs

<https://www.fdot.gov/construction/schedulingeng/schedulingmain.shtm>

Scope of Work Definitions

I. Right of Way Preparation:

Clearing and grubbing (Acres): The removal of topsoil, trees, minor physical objects, and other vegetation from the construction site using mechanical equipment.

Excavation (C.Y.): The removal and transporting of in situ soils on the construction site using mechanical equipment.

Embankment (C.Y.): The placing and compaction of soil on the construction site using mechanical equipment.

Seeding (S.Y.): The seeding of grasses, application of fertilizer and mulch, and cutting into soil.

II. Drainage Structures/Storm Sewers:

Storm Sewers (L.F.): The excavation, installation, and backfilling of drainage or sewer pipes including structures. The restoration of the stabilized roadbed and base material is included when the stabilized roadbed and base material is disturbed only for the placement of the storm sewer.

Box Culverts (C.Y.): The excavation, forming, reinforcing, pouring, finishing, stripping, and backfilling of cast in place concrete box culverts on the construction site. If using pre-cast units, then the units should be changed to L.F. and appropriate production rates substituted.

Inlets & manholes (Each): The installation of pre-manufactured inlets manholes for drainage or sewer systems. Time is included in Storm Sewers (L.F.).

III. Bridge Structures:

(Note: The production rates on several items appear low since they must include time for the total scope of activities necessary to complete an item.)

Cofferdams (S.Y.): The installation, dewatering and minor excavation associated with building a cofferdam system for a bridge construction site.

Sheet Piling (S.F.): The installation of sheeting for retaining walls and deep excavations. Do not add to cofferdams.

Piling (L.F.): The installation of piling for bridge foundations.

Footings (C.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge footings.

Columns, Caps & Bents (C.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge columns, caps, and bents.

Wingwalls (S.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete wingwalls for bridges.

Bridge deck (total depth) (C.Y.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge decks. The production rates have been set to include time for all components of the deck, including precast plank under slab, thus the full depth of the deck is used to calculate quantity.

Bridge curbs/walks (L.F.): The layout, forming, reinforcing, placing, curing, and removing forms for reinforced concrete bridge curbs and walkways.

Bridge handrails (L.F.): The layout, forming, reinforcing, placing, curing, and removing forms for cast in place reinforced concrete bridge handrails.

Retaining walls (S.F.): The layout, excavation, forming, reinforcing, placing, curing, and removing forms for cast in place reinforced concrete retaining walls. The time for precast proprietary wall systems is included in embankment.

IV. Base Preparations:

Stabilized Roadbed (S.Y.): The placement, mixing and compaction operations involved in the stabilization of subgrade soils.

Base material (S.Y.): The placement, mixing and compaction of flexible base material.

Hot mix asphalt base (Ton): The laydown and compaction of hot mix asphalt concrete base course material. The production rates are taken from the graph for plant mix.

Curb and gutter (L.F.): The layout and construction of new roadway curb and gutter using automated equipment or forms and hand finish.

Concrete pavement repair (S.Y.): The removal and replacement of sections of unsatisfactory or failed Portland cement concrete pavement.

Milling/planning (S.Y.): The removal of the surface level of existing pavements using automated milling or planning equipment.

Plant mixed surfaces (Ton): The laydown and compaction of hot mix asphalt concrete surface course material. The production rate is taken from the graph for Plant Mix.

Asphalt Friction Course (1 course) (Ton): The laydown and compaction of asphalt concrete friction course material.

Cement Concrete paving (Rebar + curing) (S.Y.): The layout, reinforcing, placing, curing, and jointing of Portland cement concrete pavement.

Precast traffic barriers (L.F.): The layout and installation of precast concrete traffic barriers. If barriers are to be cast in place, then the units should be changed to C.Y. and the production rates adjusted accordingly.

V. Permanent Signing and Traffic Signals:

Small Signs (Each): The installation of small highway information and warning signs mounted on metal posts driven into soil along a highway.

Overhead signs (Each): The installation of large highway information and directional signs mounted on metal frames over a highway. It is assumed that the footings and poles that support the frames are already in place.

Major traffic signals (Each): The installation of automated traffic signals and their support systems at highway intersections.

Pavement markings (L.F.): The application of paint or thermoplastic pavement marking materials to a highway pavement.

Raised Pavement Markers (RPM) (Ea.): The application of adhesive and other raised pavement markers.

Final clean-up (Sta.): The removal of debris, dirt and other construction materials from a highway pavement and adjacent right of way at the end of a construction project. The time for this activity is included in "General Time".

Structure demolition (WKDAYS): The demolition and removal of the materials for large structures (multi-story buildings, retaining walls, towers underground tanks, etc.) from the right of way of new construction projects.

Remove old structures (small) (WKDAYS): The demolition and removal of the materials for small structures (Single-story wood buildings, storage sheds, fences, road signs, etc.) from the right of way of new construction projects. Time for this is included in Clearing and Grubbing. Additional time may be warranted for concrete structures that require asbestos abatement.

Bridge demolition (WKDAYS): The demolition and removal of all materials for an existing bridge structure and related appurtenances (approaches, gates, signals, etc.).

Erect temporary bridge (WKDAYS): The layout and construction of a temporary bridge structure and related appurtenances for a highway construction project.

Remove temporary bridges (WKDAYS): The demolition and removal of all materials for a temporary bridges structure and related appurtenances for a highway construction project.

EXHIBIT "C"
23 CFR 635.413

~~Code of Federal Regulations~~

Federal Highway Administration, Department of Transportation
Guaranty and warranty clauses.

This content is from the eCFR and is authoritative but unofficial.

Title 23 - Highways

Chapter I - Federal Highway Administration, Department of Transportation

Subchapter G - Engineering and Traffic Operations

Part 635 - Construction and Maintenance

Subpart D - General Material Requirements

Source: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112-141, Sec. 1503 of Pub. L. 109-59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 et seq.; Sec. 1041(a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.413 Guaranty and warranty clauses.

The State DOT may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

- (a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.
- (b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.
- (c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.
- (d) A State DOT may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.
- (e) In the case of a design-build project, the following requirements will apply instead of paragraphs (a) through (d) of this section.
 - (1) General project warranties may be used on NHS projects, provided:
 - (i) The term of the warranty is short (generally one to two years); however, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement.
 - (ii) The warranty is not the sole means of acceptance;
 - (iii) The warranty must not include items of routine maintenance which are not eligible for Federal participation; and,
 - (iv) The warranty may include the quality of workmanship, materials and other specific tasks identified in the contract.
 - (2) Performance warranties for specific products on NHS projects may be used at the State DOT's discretion. If performance warranties are used, detailed performance criteria must be provided in the Request for Proposal document.

- (3) The State DOT may follow its own procedures regarding the inclusion of warranty provisions on non- NHS Federal-aid design-build contracts.
- (4) For best value selections, the State DOT may allow proposers to submit alternate warranty proposals that improve upon the warranty terms in the RFP document. Such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

[60 FR 44274, Aug. 25, 1995, as amended at 67 FR 75926, Dec. 10, 2002; 72 FR 45336, Aug. 14, 2007]

EXHIBIT "D"
BROOKS ACT

United States Code (U.S.C.) Title 40 - Public Buildings, Property and Works

Chapter 11, Section 1101 - 1104: Selection of Architects and Engineers

40 USC Ch. 11: SELECTION OF ARCHITECTS AND ENGINEERS

From Title 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

SUBTITLE I—FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES

CHAPTER 11—SELECTION OF ARCHITECTS AND ENGINEERS

Sec.	
1101.	Policy.
1102.	Definitions.
1103.	Selection procedure.
1104.	Negotiation of contract.

§1101. Policy

The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1129.)

HISTORICAL AND REVISION NOTES		
<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1101	40:542.	June 30, 1949, ch. 288, title IX, §902, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1279.

The words "The Congress hereby declares" are omitted as unnecessary.

§1102. Definitions

In this chapter, the following definitions apply:

(1) AGENCY HEAD.—The term "agency head" means the head of a department, agency, or bureau of the Federal Government.

(2) ARCHITECTURAL AND ENGINEERING SERVICES.—The term "architectural and engineering services" means—

(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(3) FIRM.—The term "firm" means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1129.)

HISTORICAL AND REVISION NOTES		
<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1102	40:541.	June 30, 1949, ch. 288, title IX, §901, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1278; Pub. L. 100–656, title VII, §742, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 100–679, §8, Nov. 17, 1988, 102 Stat. 4068.

In clause (1), the words "Secretary, Administrator, or" are omitted as unnecessary.

§1103. Selection procedure

(a) IN GENERAL.—These procedures apply to the procurement of architectural and engineering services by an agency head.

(b) ANNUAL STATEMENTS.—The agency head shall encourage firms to submit annually a statement of qualifications and performance data.

(c) EVALUATION.—For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d) SELECTION.—From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1130.)

HISTORICAL AND REVISION NOTES		
<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1103	40:543.	June 30, 1949, ch. 288, title IX, §903, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1279.

In subsection (b), the words "engaged in the lawful practice of their profession" are omitted as unnecessary because of the definition of "firm" in section 1102 of the revised title.

In subsection (c), the words "compare alternative methods for furnishing services" are substituted for "the relative utility of alternative methods of approach for furnishing the required services" to eliminate unnecessary words.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ARCHITECTURAL AND ENGINEERING SERVICES

Pub. L. 108–136, div. A, title XIV, §1427(b), Nov. 24, 2003, 117 Stat. 1670, as amended by Pub. L. 117–81, div. A, title XVII, §1702(l)(8), Dec. 27, 2021, 135 Stat. 2161, provided that: "Architectural and engineering services (as defined in section 1102 of title 40, United States Code) shall not be offered under multiple-award schedule contracts entered into by the Administrator of General Services or under Governmentwide task and delivery order contracts entered into under sections 3403 and 3405 of title 10, United States Code, or sections 303H and 303I of the Federal Property and Administrative Services Act of 1949 [former] 41 U.S.C. 253h and 253i) [now 41 U.S.C. 4103, 4105(a) to (c)(1), (d) to (i)] unless such services—

"(1) are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, territory (including the Commonwealth of Puerto Rico), possession, or Federal District in which the services are to be performed; and

"(2) are awarded in accordance with the selection procedures set forth in chapter 11 of title 40, United States Code."

§1104. Negotiation of contract

(a) IN GENERAL.—The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

(b) ORDER OF NEGOTIATION.—The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1130.)

HISTORICAL AND REVISION NOTES		
<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1104	40:544.	June 30, 1949, ch. 288, title IX, §904, as added Pub. L. 92–582, Oct. 27, 1972, 86 Stat. 1279.

EXHIBIT E
FEMA PROVISIONS W/CHECKLIST

Contract Provisions Guide

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

Procurement Disaster Assistance Team (PDAT)
June 2021
(FI-207-21-0001)



FEMA

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Introduction

FEMA grant recipients and subrecipients (also known as non-federal entities or NFEs)¹ will often use contractors to help them carry out work under their awards. These contracts are a commercial transaction between the NFE and its contractor, and FEMA has no contractual relationship with NFEs' contractors. Although FEMA is not a party to the contract, if an NFE is using federal funding to pay for the contract, the NFE must comply with federal laws, including the [federal procurement standards](#).

This Guide is applicable to *all* NFEs purchasing in support of declarations and FEMA awards issued on or after November 12, 2020 and reflects [Office of Management and Budget \(OMB\) revisions](#) to the federal procurement standards.

For FEMA declarations and awards issued between December 26, 2014 and November 11, 2020 please refer to the [Contract Provisions Template](#). While the *Contract Provisions Template* is only directly applicable to FEMA's Public Assistance (PA) Program, all FEMA grant recipients and subrecipients are encouraged to review this resource since it provides guidance on the federal procurement under grants regulations.

The federal procurement standards for NFEs are described in Title 2 of the Code of Federal Regulations (C.F.R.), Part 200, sections 200.317-200.327. [2 C.F.R. § 200.327](#) states that “the non-federal entity's contracts *must contain the applicable provisions* described in [Appendix II to this part](#)” (emphasis added).

This Guide is designed to help FEMA grant recipients and subrecipients navigate Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, including providing mandatory language and/or suggested language for each required contract provision. This Guide also describes contract clauses that FEMA *recommends* in addition to those required by 2 C.F.R. Part 200.

This Guide provides:

- Sample language or references to find sample language for some of the federally required clauses.
- Required language for clauses that require exact language.

¹ Non-federal entity is defined as a state, local government, Indian tribe, institution of higher education, or nonprofit organization carrying out a federal award as a recipient or subrecipient. 2 C.F.R. § 200.1. State is defined as “any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.” 2 C.F.R. § 200.1. The term “non-state entity” therefore refers to a non-federal entity other than a state, which includes local and tribal governments as well as nonprofit organizations.

- Sample language for some of the federally recommended clauses.

This Guide does *not* provide:

- Sample language for certain federally required or recommended clauses that must be included in accordance with the NFE's applicable laws, rules, and procedures.
- Provisions required by applicable state, tribal, or local laws or rules separate from the federal provisions.

Many of the provisions described in this Guide only apply when certain circumstances are present, such as the type of work being procured, the dollar amount, or the date when it is procured. Each section will describe the applicable requirements.

NOTE: The NFE is solely responsible for ensuring that all language included in its contracts meets the requirements of 2 C.F.R. Part 200, including 2 C.F.R. § 200.327 and Appendix II. While the Contract Provisions Guide provides general guidance, NFEs should reach out to their applicable [FEMA grant program representative\(s\)](#) if they have specific questions on the applicability of the contract provisions to a particular FEMA grant program. NFEs are encouraged to visit www.fema.gov for additional information regarding FEMA grant programs and www.fema.gov/grants/procurement for procurement under grants reference material.

Summary of Applicable Federal Procurement Standards

For the NFE to determine which federal procurement rules to follow, it must first determine whether it is a state entity or a non-state entity. Below are the federal procurement rules applicable to state and non-state entities effective November 12, 2020:

- [State entities](#)², including their agencies and instrumentalities, must follow their own documented procurement policies and procedures when purchasing under a FEMA award pursuant to 2 C.F.R. § 200.317. These entities must also comply with socioeconomic affirmative steps (2 C.F.R. § 200.321), requirement for domestic preferences for procurement (2 C.F.R. § 200.322), the requirements for procurement of recovered materials (2 C.F.R. § 200.323) and ensure that all necessary contract provisions are included in their contracts (2 C.F.R. § 200.327).
- NFEs other than states (collectively referred to as non-state entities³), which include local governments, tribes and eligible private nonprofit organizations, must have documented procurement policies and procedures, which reflect applicable local, state or tribal law, and ensure compliance with the federal requirements listed at 2 C.F.R. §§ 200.318 – 200.327.

² A state entity is “any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.” 2 C.F.R. § 200.1

³ A non-state entity is any non-federal entity (as defined above) other than a state (as defined above).

In the case of noncompliance with the federal procurement rules, FEMA may apply a remedy, as appropriate, in accordance with its authorities found at 2 C.F.R. § 200.339 *Remedies for Noncompliance*.

Policy and Guidance Document(s) Incorporated and Superseded

This Guide supersedes the [Contract Provisions Template](#) and other provisions pertaining to the procurement under grants process in policy or guidance circulated prior to the publication date of the Contract Provisions Guide. This Guide provides the most updated and authoritative information regarding required provisions under Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and FEMA-recommended contract provisions.

Document Management and Maintenance

FEMA Policy FI-207-21-0001, Contract Provisions Guide, will be reviewed, reissued, revised, and/or rescinded within four years for the issue date. The Procurement Disaster Assistance Team (PDAT), a subcomponent of FEMA's Grant Programs Directorate's (GPD) Policy Division, developed this Guide to provide accurate and updated information to assist both FEMA staff and FEMA award recipients and subrecipients navigate Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. PDAT is responsible for the management and maintenance of this Guide. Comments and feedback from FEMA personnel and stakeholders regarding this Guide should be directed to the Grants Program Directorate Policy Division at FEMA headquarters (HQ) at FEMA-GPD-Policy@fema.dhs.gov.

Contract Provisions Quick Reference Guide

Tables A and B are designed to help FEMA grant recipients and subrecipients conduct a quick reference of the applicability of a specific contract provision and whether sample contract language is included within this Guide to incorporate within the NFE's contract.

The Tables are divided between the required contract provisions set forth under 2 C.F.R. Part 200 Appendix II and those that FEMA *recommends* in addition to those required by 2 C.F.R. Part 200.

Table A: Required Contract Provisions *(continued next page)*

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included
1	Legal/contractual/administrative remedies for breach of contract	Greater than Simplified Acquisition Threshold (SAT)- \$250,000	No. It is based on NFE's procedures.
2	Termination for cause and convenience	Greater than \$10,000	No. It is based on NFE's procedures.
3	Equal Employment Opportunity	Construction work	Yes. Exact language from 41 C.F.R. § 60-1.4(b) included.
4	Davis-Bacon Act	Construction work	Yes, via reference to required language at 29 C.F.R. § 5.5(a).
5	Copeland "Anti-Kickback" Act	Construction work greater than \$2,000	Yes.
6	Contract Work Hours and Safety Standards Act	Greater than \$100,000 + mechanics or laborers	Yes. Exact language required from 29 C.F.R. § 5.5(b).
7	Rights to inventions made under a contract or agreement	Funding agreement	Yes.
8	Clean Air Act and federal Water Pollution Control Act	Greater than \$150,000	Yes.
9	Debarment and Suspension	Greater than \$25,000	Yes.
10	Byrd Anti-Lobbying Amendment	Greater than \$100,000; and Certification required for all contracts greater than \$100,000	Yes. Clause and certification.

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included
11	Procurement of Recovered Materials	NFE is a state or political subdivision of a state. Work involves the use of materials and the contract is for more than \$10,000.	Yes.
12	Prohibition on Contracting for Covered Telecommunications Equipment or Services	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.
13	Domestic Preferences for Procurements	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.

Table B: Recommended Contract Provisions

	Provision	Applicability	Sample Contract Language Included
1	Access to Records	All	Yes.
2	Contract Changes or Modifications	All	No. It depends on nature of contract and end-item procured.
3	DHS Seal, Logo, and Flags	All	Yes.
4	Compliance with federal Law, Regulations and Executive Orders	All	Yes.
5	No Obligation by Federal Government	All	Yes.
6	Program Fraud and False or Fraudulent Statements or Related Acts	All	Yes.
7	Affirmative Socioeconomic Steps	State entities: all FEMA declarations and awards issued on or after November 12, 2020. Non-state entities: all procurements	Yes.
8	Copyright	All procurements that may involve creation of copyrightable material.	Yes.

Required Contract Provisions

1. Remedies

Contracts for more than the federal simplified acquisition threshold (SAT), the dollar amount below which an NFE may purchase property or services using small purchase methods, currently set at \$250,000 for procurements made on or after June 20, 2018,⁴ must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for sanctions and penalties as appropriate.⁵

1.1 Applicability

This contract provision is required for contracts over the SAT, currently set at \$250,000 for procurements made on or after June 20, 2018. Although not required for contracts at or below the SAT, FEMA suggests including a remedies provision.

1.2 Additional Considerations

For FEMA's Assistance to Firefighters Grant (AFG) Program, recipients must include a penalty clause in all contracts for any AFG-funded vehicle, regardless of dollar amount. In that situation, the contract must include a clause addressing that non-delivery by the contract's specified date or other vendor nonperformance will require a penalty of no less than \$100 per day until such time that the vehicle, compliant with the terms of the contract, has been accepted by the recipient. This penalty clause should, however, account for *force majeure* or acts of god. AFG recipients should refer to the applicable year's Notice of Funding Opportunity (NOFO) for additional information, which can be accessed at [FEMA.gov](https://www.fema.gov).

2. Termination for Cause and Convenience

Contracts for more than \$10,000 must address termination for cause and for convenience by the non-federal entity, including how it will be carried out and the basis for settlement.⁶

2.1 Applicability

This contract provision is required for procurements exceeding \$10,000. FEMA suggests including a termination for cause and for convenience in all contracts even when not required.

⁴ See FEMA Grant Programs Directorate Information Bulletin No. 434, Increases and Changes to the Micro-Purchase and Simplified Acquisition Thresholds (Aug. 28, 2018), https://www.fema.gov/sites/default/files/2020-08/ib_434_changes_micro_purch_simp_acquisition_thresholds.pdf. For procurements subject to 2 C.F.R. Part 200 that were made before June 20, 2018, the SAT was \$150,000.

⁵ 2 C.F.R. Part 200, Appendix II, § A.

⁶ See 2 C.F.R. Part 200, Appendix II, § B.

3. Equal Employment Opportunity

Any contract that uses federal funds to pay for construction work is a “federally assisted construction contract” and must include the equal opportunity clause found in 2 C.F.R. Part 200, unless otherwise stated in 41 C.F.R. Part 60.⁷

3.1 Applicability

This contract provision is required for all procurements that meet the definition of a “federally assisted construction contract.”

3.2 Key Definitions

- *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.”
- *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.”
- *Contract*: The regulation at 41 C.F.R. § 60-1.3 defines *contract* as “any Government contract or subcontract or any federally assisted construction contract or subcontract.”
- Additional definitions pertaining to this contract provision can be found at 41 C.F.R. § 60-1.3.

3.3 Required Language

The regulation at 41 C.F.R. § 60-1.4(b) requires, except as otherwise provided or exempted in 41 C.F.R. Part 60, 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, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual

⁷ See 2 C.F.R. Part 200, Appendix II, § C.

orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings."

4. Davis-Bacon Act

This statute requires that contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor's wage determination. Additionally, contractors are required to pay wages at least once per week.⁸ Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 5.2. NFEs should refer to the applicable NOFO or other program guidance or contact their applicable FEMA grant representative for additional information on how to implement this requirement.

4.1 Applicability

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by NFEs must include a provision for compliance with the Davis-Bacon Act.⁹

The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program,¹⁰ Homeland Security Grant Program,¹¹ Nonprofit Security Grant Program,¹² Tribal Homeland Security Grant Program,¹³ Port Security Grant Program,¹⁴ Transit Security Grant Program,¹⁵ Intercity Passenger Rail Program,¹⁶ and Rehabilitation of High Hazard Potential Dams Program.¹⁷ Unless otherwise stated in a program's authorizing statute, it *does not* apply to other FEMA grant and cooperative agreement programs, including the PA Program. .

⁸ See *id.*; 40 U.S.C. §§ 3141-3144 and 3146-3148. The Davis-Bacon Act is 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)

⁹ 2 C.F.R. Part 200, Appendix II, § D.

¹⁰ See section 611(j)(9) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. No. 93-288 (codified as amended at 42 U.S.C. § 5196(j)(9)).

¹¹ See section 2008(b)(4)(B)(ii) of the Homeland Security Act of 2002, Pub. L. No. 107-296 (codified as amended at 6 U.S.C. § 609(b)(4)(B)(ii)) (citing to section 611(j)(9) of the Stafford Act).

¹² *Id.* The Davis-Bacon Act only applies to the Nonprofit Security Grant Program (NSGP) where that program is funded as a carve-out of the appropriations for the Homeland Security Grant Program (HSGP). See, e.g., Department of Homeland Security Appropriations Act, 2020, Pub. L. No. 116-93, Title III, Protection, Preparedness, Response, and Recovery, Federal Emergency Management Agency, Federal Assistance §§ 1-2. Compare *id.* with section 2009 of the Homeland Security Act of 2002 (6 U.S.C. § 609a) (authorizing NSPG as a stand-alone program where the Davis-Bacon Act does not apply, but as of the date of publication of this document, NSGP has not been funded as a standalone program).

¹³ See section 2008(b)(4)(B)(ii) of the Homeland Security Act of 2002.

¹⁴ See section 102 of the Maritime Transportation Security Act of 2002 (MTSA), Pub. L. No. 107-295 (codified as amended at 46 U.S.C. § 70107); 46 U.S.C. § 70107(b)(2). While the MTSA requires that PSGP construction activities are carried out consistent with section 611(j)(8) of the Stafford Act, a subsequent amendment to the Stafford Act by section 3 of Pub. L. No. 109-308 in 2006 redesignated the text of section 611(j)(8) to 611(j)(9). The cross-reference in the MTSA has not been updated.

¹⁵ See section 1406 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53 (6 U.S.C. § 1135) (applying the requirements of section 49 U.S.C. § 5307); 49 U.S.C. § 5333 (applying the Davis-Bacon Act to grants provided under 49 U.S.C. § 5307).

¹⁶ See section 1513(h) of the 9/11 Act (6 U.S.C. § 1163(h)) (citing to 49 U.S.C. § 24312, which requires compliance with the Davis-Bacon Act).

¹⁷ See section 8A(d)(2)(E) of the National Dam Safety Program Act (codified as amended at 33 U.S.C. § 467f-2(d)(2)(E)) (requiring compliance with 42 U.S.C. § 5196(j)(9), which is section 611(j)(9) of the Stafford Act that applies the Davis-Bacon Act).

4.2 Additional Requirements

If applicable, in addition to the requirements mentioned in the beginning of this section, the NFE must do the following:

- Place a copy of the Department of Labor’s current prevailing wage determination in each solicitation. Contracts or subcontracts must be awarded on the condition that the prevailing wage determination is accepted. The non-federal entity must report all suspected or reported violations to the federal awarding agency.¹⁸
- Include a provision for compliance with the Copeland “Anti-Kickback” Act for all contracts subject to the Davis-Bacon Act.¹⁹ See Required Contract Provisions, Section 5. Copeland Anti-Kickback Act in this Guide for additional information. According to 29 C.F.R. § 5.5(a)(5), the regulatory requirements for the Copeland “Anti-Kickback” Act are incorporated by reference into the required contract provision, so a separate contract provision is not necessary. However, the NFE may include a separate contract provision specific to the Copeland “Anti-Kickback” Act.
- Per Department of Labor’s implementing regulations for the Davis-Bacon Act, the NFEs contractor and any subcontractors are required to insert, or incorporate by reference, the clauses contained at 29 C.F.R. § 5.5(a)(1)-(10)²⁰ into any subcontracts.
- Follow the other requirements of the Davis-Bacon Act and implementing regulations.²¹

4.3 Required Language²²

If applicable per the standard described above, the NFE must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.²³

5. Copeland “Anti-Kickback” Act

The Copeland “Anti-Kickback” Act prohibits workers on construction contracts from giving up wages that they are owed.²⁴ Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 3.2. The applicable implementing regulations are intended to assist with enforcement of the

¹⁸ 2 C.F.R. Part 200, Appendix II, § D.

¹⁹ 2 C.F.R. Part 200, Appendix II, § D.

²⁰ 29 C.F.R. § 5.5(a)(6).

²¹ 40 U.S.C. §§ 3141-3144, 3146-3148; 29 C.F.R. Part 5.

²² 29 C.F.R. § 5.5(a).

²³ 29 C.F.R. § 5.5(a)(1), (6).

²⁴ See *id.*; 40 U.S.C. § 3145. The Copeland “Anti-Kickback” Act is 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).

Davis-Bacon Act's minimum wage provisions as well as various statutes with similar minimum wage provisions for federally assisted construction.²⁵

5.1 Applicability

For all prime construction contracts above \$2,000, when the Davis-Bacon Act also applies,²⁶ NFEs must include a provision in contracts and subcontracts for compliance with the Copeland "Anti-Kickback" Act.²⁷ This requirement applies to all prime construction contracts above \$2,000 in situations where the Davis-Bacon Act also applies.²⁸ In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act. As described in section A.4 regarding the Davis-Bacon Act, this provision only applies to certain FEMA grant and cooperative agreement programs. Please reference that list discussed above. Of note, it does not apply to the PA Program.

5.2 Additional Requirements

If applicable, the NFE must do the following:

- Include a provision for compliance with the Copeland "Anti-Kickback" Act.²⁹ According to the Davis-Bacon Act implementing regulations, the requirements for the Copeland "Anti-Kickback" Act are incorporated into the required contract provision for the Davis-Bacon Act by reference.³⁰ Therefore, a separate contract provision is not necessary. However, the NFE may include a separate contract provision specific to the Copeland "Anti-Kickback" Act with language suggested below.
- The Copeland "Anti-Kickback Act" prohibits each contractor or subcontractor from any form of persuading a person employed in construction, completion, or repair of public work to give up any part of their rightful compensation. The NFE must report all suspected or reported violations of the Copeland "Anti-Kickback Act" to FEMA.³¹
- Each contractor and subcontractor must provide weekly reports of the wages paid during the prior week's payroll period to each employee covered by the "Copeland Anti-Kickback" Act and the Davis-Bacon Act. The reports must be delivered to a representative of a federal or state agency in charge at the building or work site by the contractor or subcontractor within seven days of the payroll period's payment date.³²

²⁵ See 29 C.F.R. § 3.1.

²⁶ See 2 C.F.R. Part 200, Appendix II, § D; 29 C.F.R. §§ 3.1, 3.3(c).

²⁷ 2 C.F.R. Part 200, Appendix II, § D.

²⁸ See 2 C.F.R. Part 200, Appendix II, § D; 29 C.F.R. § 3.3(c).

²⁹ See 29 C.F.R. § 3.11.

³⁰ 29 C.F.R. § 5.5(a)(5).

³¹ See 2 C.F.R. Part 200, Appendix II, § D.

³² See 29 C.F.R. § 3.4.

- Follow the other requirements of the Copeland “Anti-Kickback” Act and implementing regulations.³³

5.3 Suggested Language

The following provides a sample contract clause:

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

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

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

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.”

6. Contract Work Hours and Safety Standards Act

Where applicable,³⁴ all contracts awarded by the NFE of more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with statutory requirements on work hours and safety standards.³⁵ Under 40 U.S.C. § 3702, each contractor must base wages for every mechanic and laborer on a standard 40-hour work week. Work over 40 hours is allowed, so long as the worker is paid at least one and a half times the base pay rate for all hours worked over 40 hours in the work week. Additionally, for construction work, under 40 U.S.C. § 3704, work surroundings and conditions for laborers and mechanics must not be unsanitary or unsafe. Relevant definitions are at 40 U.S.C. § 3701 and 29 C.F.R. § 5.2.

6.1 Applicability

This required contract provision applies to all procurements over \$100,000 that involve the employment of mechanics, laborers, and construction work.³⁶ These requirements *do not* apply to

³³ 18 U.S.C. § 874; 40 U.S.C. § 3145; 29 C.F.R. Part 3.

³⁴ See 40 U.S.C. §§ 3701-3708.

³⁵ 40 U.S.C. §§ 3702, 3704. The Contract Work Hours and Safety Standards Act is supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, § E.

³⁶ 41 C.F.R. Part 60-1.3.

the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.³⁷

6.2 Additional Requirements

If applicable per the standard described above, the non-federal entity must include the provisions at 29 C.F.R. § 5.5(b)(1)-(4), verbatim, into all applicable contracts, and all applicable contractors must include these provisions, in full, into any subcontracts.³⁸

In addition to the required language from 29 C.F.R. § 5.5(b)(1)-(4), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any other statutes cited in 29 C.F.R. § 5.1, the NFE must also insert a clause meeting the requirements of 29 C.F.R. § 5.5(c). Specific language is not required, but FEMA has provided suggested language below.

6.3 Required Language

For the required contract provision, the language from 29 C.F.R. § 5.5(b)(1)-(4) is provided here for ease of reference:

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

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **(insert name of grant recipient or subrecipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other

³⁷ 29 C.F.R. Part 200, Appendix II, § E.

³⁸ 29 C.F.R. § 5.5(b)(1), (4).

federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

6.4 Suggested Language

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required, FEMA suggests including the following language:

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

- (1)** The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2)** Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

7. Rights to Inventions Made Under a Contract or Agreement

This contract provision outlines the rules governing the ownership of inventions created using federal funds. If the FEMA award meets the definition of funding agreement³⁹ and the NFE enters into any contract involving substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, then the NFE must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA.

³⁹ Funding agreement definition found under 37 C.F.R. § 401.2(a).

7.1 Applicability

This provision *does not* apply to all FEMA grant and cooperative agreement programs. NFEs should refer to applicable NOFO or other program guidance or contact their applicable FEMA grant representative to determine if this provision is required for the procurement. However, the Rights to Inventions Made Under a Contract or Agreement clause is not required for procurements under FEMA's PA Program.

7.2 Key Definitions

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

8. Clean Air Act and Federal Water Pollution Control Act

For contracts over \$150,000, contracts must contain a provision requiring contractors to comply with the Clean Air Act⁴⁰ and the Federal Water Pollution Control Act.⁴¹ Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency (EPA).⁴²

8.1 Applicability

This contract provision is required for all procurements over \$150,000.

8.2 Suggested Language

The following provides a sample contract clause:

“Clean Air Act”

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

The contractor agrees to report each violation to the (insert name of non-federal entity entering into the contract) and understands and agrees that the (insert name of the non-federal entity entering into the contract) will, in turn, report each violation as required to

⁴⁰ 42 U.S.C. §§ 7401-7671q. This also includes all applicable standards, orders, or regulations issued pursuant to the Clean Air Act.

⁴¹ 33 U.S.C. §§ 1251-1387, as amended.

⁴² 2 C.F.R. Part 200, Appendix II, § G.

assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate [Environmental Protection Agency Regional Office](#).

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

“Federal Water Pollution Control Act”

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

The contractor agrees to report each violation to the (insert name of the non-federal entity entering into the contract) and understands and agrees that the (insert name of the non-federal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency (FEMA), and the appropriate [Environmental Protection Agency Regional Office](#).

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

9. Debarment and Suspension

NFEs contractors and subcontractors are subject to debarment and suspension regulations.⁴³ Applicable contracts and subcontracts must include a provision requiring compliance with debarment and suspension regulations.⁴⁴

9.1 Applicability

The debarment and suspension clause is required for all contracts and subcontracts for \$25,000 or more, all contracts that require the consent of an official of a federal agency, and all contracts for federally required audit services.⁴⁵

NFEs, even for procurements under \$25,000, must also comply with the regulation requiring non-state entities to only award contracts to responsible vendors.⁴⁶

⁴³ 2 C.F.R. Part 180 (implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989)); 2 C.F.R. Part 3000 (Department of Homeland Security regulations for Nonprocurement Debarment and Suspension, implementing 2 C.F.R. Part 180).

⁴⁴ 2 C.F.R. § 180; 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 3000.332.

⁴⁵ 2 C.F.R. § 180.220(b); 2 C.F.R. § 3000.220.

⁴⁶ 2 C.F.R. § 200.318(h). For contracts and subcontracts under \$25,000, a contract provision is only required if those contracts or subcontracts are for federally required audit services or require the consent of a federal agency. However, even where a contract provision is not required, non-state entities must still ensure they are only awarding contracts to responsible vendors.

9.2 Additional Requirements

The debarment and suspension regulations restrict awards, subawards, contracts, and subcontracts with parties that are debarred, suspended, or otherwise excluded, or declared ineligible for participation in federal assistance programs and activities.⁴⁷

If applicable, a contract or subcontract must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM). SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties that are debarred, suspended, or otherwise excluded, or declared ineligible under statutory or regulatory authority other than Executive Order 12549.⁴⁸ SAM Exclusions can be accessed at www.sam.gov.⁴⁹

In general, an “excluded” party cannot receive a federal grant award or a contract considered to be a “covered transaction,” which includes parties that receive federal funding indirectly such as subawards and subcontracts. The key to the exclusion is whether there is a covered transaction. A covered transaction is a nonprocurement transaction at either a primary or secondary tier.⁵⁰

Specifically, a covered transaction includes the following contracts for goods or services under FEMA grant and cooperative agreement programs:

- The contract is at least \$25,000.
- The contract requires the approval of FEMA, regardless of amount.
- The contract is for federally required audit services.
- It is a subcontract for \$25,000 or more.⁵¹

9.3 Suggested Language

The following provides a debarment and suspension clause. It also incorporates an optional method of verifying that contractors are not excluded or disqualified⁵²:

⁴⁷ See 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 200.213. See also 2 C.F.R. Parts 180, 3000.

⁴⁸ See 2 C.F.R. Part 200, Appendix II, § H.

⁴⁹ 2 C.F.R. § 180.530.

⁵⁰ The regulations at 2 C.F.R. Parts 180 and 3000 are titled “nonprocurement” because they do not apply to procurements by the federal government but rather to federal financial assistance. There are separate debarment and suspension regulations covering procurements by the federal government. However, although the term “covered transactions” under 2 C.F.R. Parts 180 and 3000 *does not* include contracts awarded by the federal government, it *does* include some contracts awarded by recipients and subrecipients.

⁵¹ See 2 C.F.R. §§ 180.220, 3000.220.

⁵² Per 2 C.F.R. § 180.300, non-federal entity about to enter into an applicable contract, or a contractor about to enter into an applicable subcontract, must verify that the contractor or subcontractor is not excluded or disqualified by doing one of three things: 1) check SAM Exclusions; 2) collect a certification from the contractor or subcontractor; or 3) add a clause or condition to the contract or subcontract. The additional suggested language in this sample clause is for purposes of this requirement.

“Suspension and Debarment

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to **(insert name of recipient/subrecipient/applicant)**, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

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

10. Byrd Anti-Lobbying Amendment

NFEs who intend to award contracts of more than \$100,000, and their contractors who intend to award subcontracts of more than \$100,000, must include a contract provision prohibiting the use of federal appropriated funds to influence officers or employees of the federal government. Contractors that apply or bid for a contract for more than \$100,000 must also file the required certification regarding lobbying.⁵³

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 employee of a federal agency, a Member of Congress, an employee of Congress, or an employee of a Member of Congress in connection with receiving any federal contract, grant, or other award covered by 31 U.S.C. § 1352.

⁵³ See 2 C.F.R. Part 200, Appendix II, § I (citing 31 U.S.C. § 1352); 44 C.F.R. § 18.110.

The required certification form is found in FEMA regulations.⁵⁴ Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal funding. These disclosures are forwarded from tier to tier, all the way up to the federal awarding agency.⁵⁵

10.1 Applicability

The Byrd Anti-Lobbying Amendment clause and certification are required for contracts of more than \$100,000, and for subcontracts of more than \$100,000.

10.2 Suggested Language

The following provides a sample contract clause:

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

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally 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 who in turn will forward the certification(s) to the federal awarding agency.”

10.3 Required Certification

10.3.1 REQUIRED CERTIFICATION LANGUAGE

If applicable, contractors must sign and submit the following certification to the NFE with each bid or offer exceeding \$100,000:

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

⁵⁴ See 44 C.F.R. §§ 18.100, 18.110; 44 C.F.R. Part 18, Appendix A. FEMA’s regulations at 44 C.F.R. Part 18 implement the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352.

⁵⁵ See 44 C.F.R. §§ 18.100, 18.110; 44 C.F.R. Part 18, Appendix B. The specific form for disclosures is referenced in Appendix B to 44 C.F.R. Part 18 and is SF-LLL, also available at <https://www.grants.gov/web/grants/forms/sf-424-family.html>.

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.

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.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. 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."

10.3.2 RECOMMENDED SIGNATURE LINE:

At the end of the certification language, FEMA recommends including the following signature line.

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

11. Procurement of Recovered Materials

An NFE that is a state agency or an agency of a political subdivision of a state, and the NFE's contractors must comply with Section 6002 of the Solid Waste Disposal Act.⁵⁶ Applicable NFEs must include a contract provision requiring compliance with this requirement.⁵⁷ This includes contracts awarded by a state agency or political subdivision of a state and its contractors for certain items, as designated by the EPA, with a purchase price greater than \$10,000.⁵⁸ Indian Tribal Governments and nonprofit organizations are not required to comply with this provision. Additional requirements are listed below.

11.1 Applicability

This required contract provision applies to all procurements over \$10,000 made by a state agency or an agency of a political subdivision of a state and its contractors.

11.2 Additional Requirements

The requirements include:

- Procuring only items designated in EPA guidelines⁵⁹ that contain the highest practical percentage of recovered materials consistent with maintaining competition, where the purchase price of the item is greater than \$10,000, or the value of the amount of items purchased in the preceding fiscal year was greater than \$10,000;
- Procuring solid waste management services in a way that maximizes energy and resource recovery; and
- Establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.⁶⁰

11.3 Suggested Language

The following provides a sample contract clause:

“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—

⁵⁶ Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). 2 C.F.R. § 200.323.

⁵⁷ See 2 C.F.R. Part 200, Appendix II, § J (citing 2 C.F.R. § 200.323).

⁵⁸ See 2 C.F.R. Part 200, Appendix II, § J; 2 C.F.R. § 200.323; 40 C.F.R. Part 247.

⁵⁹ 40 C.F.R. Part 247.

⁶⁰ 42 U.S.C. § 6962; 2 C.F.R. § 200.323.

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

Meeting contract performance requirements; or

At a reasonable price.

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

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

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

12. Prohibition on Contracting for Covered Telecommunications Equipment or Services

Section 889(b)(1) of the [John S. McCain National Defense Authorization Act for Fiscal Year 2019 \(FY2019 NDAA\)](#) and 2 C.F.R. § 200.216, as implemented by [FEMA Policy 405-143-1](#), Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), prohibit the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, *may not* obligate or expend any FEMA award funds to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

12.1 Applicability

For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients, and their contractors and subcontractors, are required to include this contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders.⁶¹ FEMA strongly encourages the use of this contract clause for any contracts where

⁶¹ 2 C.F.R. Part 200, Appendix II, § K (citing 2 C.F.R. § 200.216).

FEMA funding will be used regardless of whether the funding is from FEMA declarations or awards issued on or after November 12, 2020.

12.2 Suggested Language

The following provides a sample contract clause:

“Prohibition on Contracting for Covered Telecommunications Equipment or Services

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- (b) *Prohibitions.*
 - (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) *Exceptions.*
 - (1) This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are *not used* as a substantial or essential component of any system; and
 - ii. Are *not used* as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) *Reporting requirement.*
 - (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
 - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

13. Domestic Preferences for Procurements

As appropriate, and to the extent consistent with law, NFEs should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.⁶²

13.1 Applicability

For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements.⁶³

13.2 Suggested Language

The following provides a sample contract clause:

“Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

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

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

⁶² See 2 C.F.R. § 200.322.

⁶³ 2 C.F.R. Part 200, Appendix II, § L (citing 2 C.F.R. § 200.322). The requirements of 2 C.F.R. § 200.322 must also be included in all subawards.

FEMA Recommended Contract Provisions

Appendix II to Part 200 authorizes FEMA to require or recommend additional provisions for NFE contracts. Therefore, FEMA recommends the following:

1. Access to Records

NFEs and their contractors and subcontractors must give the Department of Homeland Security (DHS) and FEMA access to records associated with their awards during the federally required record retention period and as long as the records are retained.⁶⁴ All parties agree to comply with DHS provisions about accessing people, places, and things related to the federal financial award as necessary or as required by DHS regulations or other applicable laws and policies.⁶⁵ Additionally, for contracts entered into after August 1, 2017, under a major disaster or emergency declaration under Titles IV or V of the Robert T. Stafford Disaster Relief Act, FEMA is prohibited from funding any contracts that prevent audits or internal reviews by the FEMA Administrator or Comptroller General.⁶⁶

1.1 Suggested Language for All Procurements

The following provides a sample contract clause:

“The Contractor agrees to provide **(insert non-federal entity), (insert name of pass-through entity, if applicable)**, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

⁶⁴ 2 C.F.R. §§ 200.334, 200.337.

⁶⁵ See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

⁶⁶ See Sections 1202 and 1225 of the Disaster Recovery Reform Act of 2018, Pub. L. No. 115-254.

1.2 Additional Suggested Language Applicable to Contracts Entered into After August 1, 2017 Under a Major Disaster or Emergency Declaration

The following provides a sample contract clause:

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the **(insert name of the non-federal entity)** and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.”

2. Changes

To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.⁶⁷

2.1 Applicability

FEMA recommends that all contracts include a changes clause 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 depend on the nature of the contract and the procured item(s) or service(s). The NFE should also consult their servicing legal counsel to determine whether and how contract changes are permissible under applicable state, local, or tribal laws or regulations.

3. DHS Seal, Logo, and Flags

Recipients must obtain permission before using the DHS seal(s), logos, crests, reproductions of flags, or likenesses of DHS agency officials.⁶⁸

3.1 Applicability

FEMA recommends that all NFEs include in their contracts a statement that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without FEMA’s pre-approval.

3.2 Suggested Language

The following provides a sample contract clause:

⁶⁷ See 2 C.F.R. § 200.403.

⁶⁸ See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

“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. The contractor shall include this provision in any subcontracts.”

4. Compliance with Federal Law, Regulations, And Executive Orders and Acknowledgement of Federal Funding

The NFEs and its contractors are required to comply with all federal laws, regulations, and executive orders. Additionally, recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.⁶⁹

4.1 Applicability

FEMA recommends that all NFEs include in their contracts a statement acknowledging that FEMA funding will be used in the contract, as well as a requirement that contractors will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

4.2 Suggested Language

The following provides a sample contract clause:

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

5. No Obligation by Federal Government

FEMA is not a party to any transaction between a NFE and its contractor. Therefore, FEMA is not subject to any obligations or liable to any party for any matter relating to the contract between an NFE and its contractor.⁷⁰

5.1 Applicability

FEMA recommends that the NFE include a statement in its contract that the federal government *is not* a party to the contract and, thus, *is not* subject to any obligations or liabilities to any party resulting from the contract.

⁶⁹ See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

⁷⁰ See, e.g., 2 C.F.R. § 200.318(k) (stating that the NFE alone is responsible for the settlement of all contractual and administrative issues arising out of procurements).

5.2 Suggested Language

The following provides a sample contract clause:

“The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

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

NFEs must comply with the requirements of the False Claims Act which prohibits submitting false or fraudulent claims for payment to the federal government.⁷¹ As a part of the contract with a NFE, contractors must acknowledge that 31 U.S.C. Chap. 38, regarding administrative remedies for false claims and statements,⁷² applies to their actions under their contract.⁷³

6.1 Applicability

FEMA recommends that contracts include a provision prohibiting making false or fraudulent claims to the federal government.

6.2 Suggested Language

The following provides a sample contract clause:

“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.”

7. Affirmative Socioeconomic Steps

For procurements under FEMA declarations and awards issued on or after November 12, 2020, all NFEs are required to take the six affirmative steps to ensure use of small and minority businesses, women’s business enterprises, and labor surplus area firms when possible. One of the six steps is to require the prime contractor, if subcontracts are to be let, to take the five other affirmative steps,⁷⁴ For procurements under FEMA declarations and awards issued between December 26, 2014, and November 12, 2020, this requirement *only* applies to non-state entities.

⁷¹31 U.S.C. §§ 3729-3733.

⁷² 31 U.S.C. §§ 3801-3812 (detailing the administrative remedies for false claims and statements made).

⁷³ See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

⁷⁴ See 2 C.F.R. § 200.321; compare 2 C.F.R. § 200.317 (2019), with 2 C.F.R. § 200.317 in Office of Management and Budget, Guidance for Grants and Agreements, 85 Fed. Reg. 49,506, 49,552 (Aug. 13, 2020).

7.1 Applicability

FEMA recommends that applicable NFEs include in their contracts a statement requiring prime contractors, if subcontracts are to be let, to take the required affirmative socioeconomic steps.

7.2 Suggested Language

The following provides a sample contract clause:

“If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.”

8. Copyright and Data Rights

An NFE is required by 2 C.F.R. § 200.315 to provide certain licenses with respect to copyright and data to the federal awarding agency. 2 C.F.R. § 200.315(b) provides to the federal awarding agency “a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use [any work that is subject to copyright] for federal purposes, and to authorize others to do so.” 2 C.F.R. § 200.315(d) provides to the federal government the rights to “obtain, reproduce, publish, or otherwise use” data produced under a federal award and to authorize others to do the same.

8.1 Applicability

When an NFE enters into a contract requiring a contractor or subcontractor to produce copyrightable subject matter and/or data for the NFE under the award, the NFE should include appropriate copyright and data licenses to meet its obligations under 2 C.F.R. § 200.315(b) and (d), respectively. Work that is subject to copyright, or copyrightable subject matter, includes any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works.⁷⁵

8.2 Suggested Language

The following provides a sample contract clause:

“License and Delivery of Works Subject to Copyright and Data Rights”

The Contractor grants to the **(insert name of the non-federal entity)**, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify

⁷⁵ See 17 U.S.C. § 102.

such data and grant to the **(insert name of the non-federal entity)** or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the **(insert name of the non-federal entity)** data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the **(insert name of the non-federal entity).**”

Appendix

Acronyms

AFG: Assistance to Firefighter Grants

CAGE: Commercial and Government Entity

CFR: Code of Federal Regulations

DHS: U.S. Department of Homeland Security

DRRA: Disaster Recovery and Reform Act of 2018

EPA: U.S. Environmental Protection Agency

FEMA: Federal Emergency Management Agency

GPD: Grant Programs Directorate

HQ: FEMA Headquarters

NDAA: National Defense Authorization Act

NFE: Non-Federal Entity

NOFO: Notice of Funding Opportunity

OMB: Office of Management and Budget

PA: Public Assistance Program

PNP: Private Non-Profit

PDAT: Procurement Disaster Assistance Team

SAM: System for Award Management

SAT: Simplified Acquisition Threshold

USC: United States Code

Definitions

- **Contract:** A legal instrument by which a FEMA award recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award.⁷⁶ A contract, for the purposes of this Guide, does not mean a federal award or subaward.
- **Contractor:** *Contractor* means an entity that receives a contract.⁷⁷
- **Cooperative agreement:** A legal instrument of financial assistance between a federal awarding agency or pass-through entity and a non-Federal entity, that is consistent with 31 U.S.C. 6302-6305.⁷⁸
- **Federal awarding agency:** The federal agency that provides a federal award directly to a non-Federal entity (NFE). The federal awarding agency discussed in this Guide is FEMA.
- **Federal Emergency Management Agency (FEMA):** *FEMA's* statutory mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.⁷⁹ Among other things:
 - FEMA administers its programs and carries out its activities through its headquarters offices in Washington, D.C.; ten Regional Offices; Area Offices for the Pacific, Caribbean, and Alaska; various Recovery Offices; and temporary Joint Field Offices (JFO).
 - FEMA administers numerous assistance programs annually for on a regular basis to increase the Nation's preparedness, readiness and resilience to all hazards. These assistance programs are typically available to NFEs including, but not limited to, states, local governments, Indian Tribes, universities, hospitals, and certain private nonprofit organizations.
 - Each program is governed by the applicable federal law, regulations, executive orders and FEMA program-specific policies. As the Federal awarding agency for these programs, FEMA is responsible for the proper management and administration of these programs as otherwise required by law and enforcing the terms of the agreements it enters with NFEs that receive FEMA financial assistance, consistent with the requirements at 2 C.F.R. Part 200.

⁷⁶ 2 C.F.R. § 200.1 *Contracts*.

⁷⁷ 2 C.F.R. § 200.1 *Contractor*.

⁷⁸ 2 C.F.R. § 200.1 *Cooperative agreement*.

⁷⁹ See Homeland Security Act of 2002, Pub. L. No. 107-296, § 503 (2002) (codified as amended at 6 U.S.C. § 313).

- **Federal award:** The financial assistance that an NFE receives either directly from a Federal awarding agency or indirectly from a pass-through entity.⁸⁰ In this Guide, the term is used interchangeably with “FEMA Award,” “grant,” and “financial assistance.”
- **Grant agreement:** A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and an NFE that, consistent with 31 U.S.C. §§ 6302, 6304: Is used to transfer anything of value from the Federal awarding agency or pass-through entity to the NFE to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. § 6101(3)); and does not include an agreement that provides only:
 - Direct United States government cash assistance to an individual;
 - A loan;
 - A loan guarantee; or
 - A subsidy;
 - Insurance.
- **Indian tribe (or “federally recognized Indian tribe”):** *Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)).⁸¹ See annually published [Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services](#). For the purposes of this Guide, used interchangeably with “Indian Tribal government”.
- **Local government:** *Local government*⁸² means any unit of government within a state, including a:
 - County
 - Borough
 - Municipality
 - City
 - Town
 - Township
 - Parish
 - Special district
 - School District
 - Intrastate district
 - Council of governments, whether incorporated or not as a nonprofit corporation under state law
 - Local public authority, including any public housing agency under the United States Housing Act of 1937
 - Any other agency or instrumentality of a multi-regional, or intra-state or local government

⁸⁰ 2 C.F.R. § 200.1 *Federal award*.

⁸¹ 2 C.F.R. § 200.1 *Indian tribe*.

⁸² 2 C.F.R. § 200.1 *Local government*.

- **Non-Federal Entity (NFE):** A state, local government, Indian tribe, Institution of Higher Education, or eligible private nonprofit organization that carries out a federal award as a recipient or subrecipient.⁸³ In this Guide, NFEs include state and non-state entities.
- **Non-State Entity:** A *non-state entity* is an eligible FEMA award recipient or subrecipient that does not meet the definition of a “state under 2 CFR 200.1.
- **Nonprofit organization** (in this Guide, it is used interchangeably with “Private Nonprofit Organization or PNP”): *Nonprofit organization*⁸⁴ means any corporation, trust, association, cooperative, or other organization, not including Institutions of Higher Education, that:
- **Recipient:** An NFE that receives a federal award directly from a Federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients.⁸⁵ A recipient is responsible for administering the federal award in accordance with applicable federal laws. Examples of recipients include state, Indian tribe, or territorial governments.
- **Pass-through entity:** A recipient that provides a subaward to a subrecipient to carry out part of a federal program is known as the pass-through entity.⁸⁶ Pass-through entities are responsible for processing subawards to subrecipients and ensuring subrecipient compliance with the terms and conditions of the FEMA award agreement.
- **Political Subdivision:** A *political subdivision* means the unit of government that the State determines to have met the State’s legislative definition of a political subdivision.⁸⁷
- **Simplified Acquisition Threshold (SAT):** *Simplified acquisition threshold* means the dollar amount below which an NFE may purchase property or services using small purchase methods. NFEs adopt small purchase procedures to expedite the purchase of items costing less than the simplified acquisition threshold. The federal SAT is set by the FAR at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with [41 U.S.C. 1908](#).⁸⁸ As of June 2018, the federal SAT is \$250,000,⁸⁹ but is periodically adjusted for inflation.
- **State:** *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.⁹⁰ In this Guide, state is used interchangeably with “state entity”.

⁸³ 2 C.F.R. § 200.1 *Non-Federal entity*.

⁸⁴ 2 C.F.R. § 200.1 *Nonprofit organization*.

⁸⁵ 2 C.F.R. § 200.1 *Recipient*.

⁸⁶ 2 C.F.R. § 200.1 *Pass-through entity*.

⁸⁷ 40 C.F.R. § 35.6015(a) *Political subdivision*

⁸⁸ 2 C.F.R. § 200.1 *Simplified acquisition threshold*.

⁸⁹ Section 805 codified at 41 U.S.C. § 134; OMB Memo (M-18-18), available at <https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf>.

⁹⁰ 2 C.F.R. § 200.1 *State*. Some hospitals and IHEs as defined by 2 C.F.R. § 200.1 *Hospitals* and 2 C.F.R. § 200.1 *Institutions of Higher Education* respectively, may meet the definition of a State.

- **Subaward:** An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.⁹¹ In this Guide, the term is used interchangeably with “subgrant.”
- **Subrecipient:** An NFE that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program.⁹²
- **Uniform Rules:** The series of regulations found at 2 C.F.R. Part 200 that establishes *Uniform Administrative Requirements, Cost Principles, and Audit Requirements* for federal awards to NFEs. The *Uniform Rules* are referred to by several names throughout the remaining portions of this Guide. Some of the names include standards, requirements, rules, and regulations.

⁹¹ 2 C.F.R. § 200.1 *Subaward*.

⁹² 2 C.F.R. § 200.1 *Subrecipient*.



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CONTRACT PROVISIONS TEMPLATE

FEMA Office of Chief Counsel

Procurement Disaster Assistance Team



INTRODUCTION

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract **must** contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. In addition, there are certain contract clauses which are recommended by FEMA.

This document outlines the federally required contract provisions in addition to FEMA-recommended provisions.

- For some of the required clauses, sample language or references to find sample language are provided.
- Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not provided since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures.
- For the clauses which require that exact language be included, the required language is provided. Those clauses are specifically identified below.

Please note that the non-Federal entity alone is responsible for 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.





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Required Contract Provisions: Quick Reference Guide

KEY	
Required/Recommended Provision	<input type="checkbox"/>
Required/Recommended Provision and Required Exact Language	<input type="checkbox"/>
Not Required for PA Awards (Grants)	<input type="checkbox"/>

	Required Provision	Contract Criteria	Sample Language?
1.	Legal/contractual/administrative remedies for breach of contract	> Simplified Acquisition Threshold (\$250k)	No. It is based on applicant's procedures.
2.	Termination for cause or convenience	> \$10k	No. It is based on applicant's procedures.
3.	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)
4.	Davis Bacon Act	Construction work	Not applicable to PA grants
5.	Copeland Anti-Kickback Act	Construction work > \$2k	Not applicable to PA grants
6.	Contract Work Hours and Safety Standards Act	> \$100k + mechanics or laborers	Yes. 29 CFR 5.5(b)
7.	Rights to inventions made under a contract or agreement	Funding agreement	Not applicable to PA grants
8.	Clean Air Act and Federal Water Pollution Control Act	>\$150k	Yes
9.	Debarment and Suspension	All	Yes
10.	Byrd Anti-Lobbying Amendment	All (>\$100k: Certification)	Yes. Clause and certification
11.	Procurement of Recovered Materials	Applicant is a state or political subdivision of a state. Work involves the use of materials.	Yes





Recommended Contract Provisions: Quick Reference Guide

	Recommended Provision	Contract Criteria	Sample Language?
1.	Access to Records	All	Yes
2.	Contract Changes or Modifications	All	No. It depends on nature of contract and end-item procured.
3.	DHS Seal, Logo, and Flags	All	Yes
4.	Compliance with Federal Law, Regulations and Executive Orders	All	Yes
5.	No Obligation by Federal Government	All	Yes
6.	Program Fraud and False or Fraudulent Statements or Related Acts	All	Yes





REQUIRED CONTRACT PROVISIONS

1. REMEDIES

- a. Standard. Contracts for more than the simplified acquisition threshold, currently set at \$250,000, 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. Standard. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be 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

If applicable, exact language below in subsection 3.d is required.

- 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.

- i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

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

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for





employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures





authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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





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

4. DAVIS-BACON ACT

- a. Standard. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- c. Requirements. If applicable, the non-federal entity must do the following:
 - i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
 - ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with





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

- iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT

- a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).





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

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland “Anti-Kickback” Act.

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment





as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. Standard. Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
- b. Applicability. This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- c. Suggested Language. The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.





(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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





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Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

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

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- a. Standard. If applicable, contracts 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).
- b. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.
- c. Suggested Language. The following provides a sample contract clause.

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 applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by 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 applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. DEBARMENT AND SUSPENSION

- a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- b. Applicability. This requirement applies to all FEMA grant and cooperative





agreement programs.

c. Requirements.

- i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. 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.
- ii. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any 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 subrecipients.
- iii. 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. Suggested Language. The following provides a debarment and suspension





clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment

- (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's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (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 recipient/subrecipient/applicant**). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (**insert name of recipient/subrecipient/applicant**), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (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.

10. BYRD ANTI-LOBBYING AMENDMENT

- a. Standard. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any





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Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.

- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- c. Suggested Language.

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 who in turn will forward the certification(s) to the awarding agency.

- d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any





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Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date





11. PROCUREMENT OF RECOVERED MATERIALS

- a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.
- b. Applicability. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- d. Suggested Language.
 - i. 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—
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.
 - ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."





RECOMMENDED CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, **FEMA recommends** the following:

1. ACCESS TO RECORDS

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

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.

(4) In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

2. CHANGES

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

3. DHS SEAL, LOGO, AND FLAGS

- a. Standard. Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. Applicability. FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- c. Suggested Language.

"The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."





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

- a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.
- b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- c. Suggested Language.

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

5. NO OBLIGATION BY FEDERAL GOVERNMENT

- a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.
- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- c. Suggested Language.

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

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

- a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or





fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- c. Suggested Language.

“The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”



ATTACHMENTS – PURCHASING FORMS

**NOTE: PURCHASING FORMS ARE SUBJECT WITHOUT PRIOR APPROVAL TO CHANGE BASED
ON FINANCE/DEPARTMENTS NEEDS**

PLEASE CONTACT FINANCE TO OBTAIN THE MOST CURRENT FORMS