

## XII PROCUREMENTS SUBJECT TO FEDERAL FUNDING

**12.01 Additional Standards.** In addition to the procedures specified elsewhere in this Purchasing Manual, which are incorporated herein by reference, the County shall abide by the following purchasing procedures applicable to procurements that are subject to federal funding as referenced in 2 CFR 200: Uniform Administrative Requirements, Costs Principles and Audit Requirements for Federal Awards (Uniform Guidance), which is hereby incorporated by reference. These procedures are in addition to all other relevant procedures in this Purchasing Manual, except that in the event of a conflict these procedures will control if a purchase is made using federal funds.

**12.02 Background.** The United States Office of Management and Budget (OMB) Issued the Uniform Guidance, which reforms rules applicable to entities receiving federal grant funding by streamlining and superseding eight OMB circulars (A-21, A-87, A-122, A-110, A-102, A-133, A-50 and A-89). The new procurement standards are found in Subpart D: Post Federal Award Requirements: 2 CFR §200.317 through §200.327

**12.03 Compliance Requirements -Procurement.** The following is an overview of the procurement standards and procedures applicable when procuring property and services under a Federal award in accordance with 1 CFR §200.317 through §200.327, which are hereby incorporated by reference.

**12.03.1** The County, as a non-Federal entity other than a State, will follow §§ 200.318 General procurement standards through 200.327 Contract provisions. [See §200.317].

**12.03.2 Procurement Procedures:** The County will use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurement conform to applicable Federal statutes and the procurement requirements identified in 2 CFR part 200. [See §200.318(a)] When preparing a federally funded contract, the County Purchasing Dept, Planning Dept., and County Attorney will review the required federal clauses in Appendix II and make sure that all clauses required for the contract is included.

**12.03.3 Conflicts of Interest/Standards of Conduct:** The County will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, awarded and administration of contracts. In addition to the following the County incorporates standards referenced above and Standards of Conduct in applicable County Personnel Manuals. [See §200.318(c)].

a No employee, officer, or agent may participate in the selection, award, or administration of contracts supported by Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. Addressed in County's Bids, RFP's, RFQ's (Attachment B -No\*Collusion Affidavit), (Attachment G -Conflict of Interest Questionnaire) Purchasing Manual (Ethics Policy) [See §200.318(c)(J)].

b. Officers, employees, and agents of the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the County may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. If this is done these standards will be promulgated like other County policies and procedures. Addressed in County's Bids, RFP's, RFQ's (Attachment B -Non-Collusion Affidavit), (Attachment G –Conflict of Interest Questionnaire, Attachment H- Disclosure of Interest Questionnaire) Purchasing Manual (Ethics Policy) {See §200.318(c)(I)}.

c. If the County has an affiliate or subsidiary organization that is not a government entity, the County will also maintain written standards of conduct concerning organizational conflicts of interest arising from its relationship with the affiliate or subsidiary.

d The County will disclose any potential conflicts of interest in writing to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy. [See 2 CFR §200.112]. Additionally, the County will disclose in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Further, if applicable, the County will make post-award reports as provided by Appendix XII to Part 200.

e. Violations of this policy may result in disciplinary action consistent with County disciplinary policy, including but not limited to dismissal. Further, violations may be referred to the appropriate law enforcement agency for investigation and possible prosecution.

12.03.4 **Oversight:** Once the Contract is awarded, oversight must be maintained to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. County Contract monitor will be utilized to track and perform quantity and quality control responsibilities in monitoring role towards compliance verification. [See §200.3J8(b)].

12.03.5 All proposed procurement actions shall be reviewed to avoid the purchase of unnecessary or duplicative items as stated in Independent Procedure IP "Prevention of Unnecessary and Duplicative Purchases".

Where applicable, consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Review of all potentially related consolidation in sourcing of items towards economy of scale.

Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach County will consider leasing of items whenever determined to be more cost effective versus purchase of items which are not necessarily required beyond the immediate or project related intended use. [See §200.318MJ]

12.03.06 The County may enter into state and local intergovernmental agreement, or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. County will explore interlocal agreement option with other entities towards sharing of goods and services in an effort to reduce overall cost. The County also approved Resolution 20/9R2007 on February 5, 2019. [See §200.318(e)]

12.03.07 Federal excess and surplus property may be used in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. State and Federal Surplus sites will be reviewed for potential adaptations to meet project needs. [See §200.318(f)]

12.03.08 Deliberately omitted.

12.03.09 Contracts should be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources, as well as whether the contractor is suspended or debarred receiving federal funds. (See Bids, RFP's, RFQ's Attachment F- Certificate Regarding Debarment, Suspension Ineligibility, Attachment F-2-Sworn Statement of Debarment, Attachment F-3 -Architects, Engineers, Construction Performance, Attachment I-House Bill 89 Verification, Texas Ethics Commission Form 1295) [See §200.318(h)].

12.03.10 The County will maintain records sufficient to detail the history of procurement. The County's Records Retention Policy as adopted by Commissioners Court and presented by the County Clerks Dept. (Official Records Manager for the County) - Purchasing Bids, RFP's, RFQ's, and contracts is five (5) years (in accordance with §200.318(i)).

12.03.11 The County may not enter a contract with time and materials based pricing unless there is a not-to-exceed clause and the Purchaser determines that other fee structures are not suitable.

12.03.12 The County alone shall be responsible for all contractual and administrative issues arising out of procurements in accordance with good administrative practice and sound business judgment. County Civil legal Division will coordinate these matters as they arise. County protest procedures apply to Bid, RFP's, RFQ's and written quotations. Once a contract has been executed, any disputes are dealt with at the time they arise. County Civil legal Department addresses contract disputes on behalf of the County.

12.3.13 Discounts, transportation costs, or life cycle costs will only be considered when they are specified in the bidding documents. These will only be considered when specified in the bidding documents. These are not considered if not specified in the Bid /RFP documents.

**12.04 Competition.** All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 2 CFR §200.319. Note 12.06 below identifies sources towards maximizing competitive solicitations. Purchasers will review all Bid specifications and requirements towards eliminating unduly restrictive requirements.

12.04.01.01 In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements.

12.04.01.02 The County will avoid the following actions in procurement of goods and services:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;

- (5) Organizational conflicts of interest;
- (6) Except where required and justified as a sole source purchase, Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process . §200.319(a)

**12.04.02 Geographical Limitation:** Unless specifically excepted as provided in 2 CFR §200.319(b), the County will not impose state or local geographical preferences in the evaluation of bids or proposals for federally funded contracts.

12.04.03.01 Contract solicitations: Purchaser shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Detailed specifications and materials product description must be clearly identified.

12.04.03.02 Contract solicitations shall specify all requirements which the potential vendors must fulfill to submit bids or proposals, and identify all other factors to be used in evaluating bids or proposals. Scoring criteria shall be utilized in evaluation and analysis of Proposals.

12.04.04 All prequalified lists of persons, firms, or products which are used in acquiring goods and services shall be kept current and include enough qualified sources to ensure minimum open and free competition, and potential bidders will not be precluded from qualifying during the solicitation period [See §200.319(d)]. County Purchasing Department are // and updated Bidders /list See 12.06 below.

**12.05 Methods of Procurement with Federal Funds.** The County will use one of the following five procurement methods as discussed in 2 CFR §200.320 when making purchases with federal funds. Should State or local procurement requirements applicable to a purchase being made with federal funds be more restrictive than Federal requirements, the more restrictive requirements or methods will be followed. The type of procurement process to use will depend on the cost and type of services or item(s) being purchased.

Micro-purchase = County under \$500 - No quotations or competitive process required – Vendors for purchases under \$500 shall be rotated – requisition and Purchase Order required. (Travel regulations and Gas purchases included..)

Small purchase procedures - informal Bids = County \$500 to \$14,999 and Commissioners Court approval \$15,000 to \$24,999 - Three written quotations required, requisition, Purchase Order.

Sealed Formal Bids = \$25,000 and more unless exception applies

Competitive proposals = County proposal process for Professional Services, IT & High Tech and Commissioners Court approved instances of projects not suitable for detailed specifications.

Request for Qualifications = Qualifications based on price proposals (Engineering & Architecture, Land Surveying, Professional services. Cameron County follows the Professional Services Procurement Act Govt. Code ch 2254 Subch A

Non-competitive proposals Sole Source - under \$15,000 Sole Source letter Department Head, Vendor, Purchasing Agent. Commissioners Court approval required \$15,000 to include Sole Source letter Department Head, Vendor, Purchasing Agent.

Emergency Purchases over \$15,000 requires Commissioners Court approval/ratification whenever time is crucial in preventing an escalating health and safety concern or preventing a crucial incident as per Texas State Statute 262.024

Special & Discretionary Purchases as per Texas State Statute 262.024. For procurement of Federally funded land surveying Cameron County will contact the federal awarding agency or pass-through entity (TCEQ), for RESTORE projects to request authorization for noncompetitive procurement under 2 CFR 200.320(c)(4).

Personal service - as per

Under the Micro-Purchase dollar threshold rotation of available vendors will be utilized

Over the Micro-Purchase dollar threshold will comply with State of Texas, Local Government Code Ch 262.024 (a) (4).

**12.06 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.** The County takes all necessary affirmative steps (and will include in all related contracts language towards Contractor Certification of Small, Minority, or Women Business ownership - when possible) as described in §200.321 to assure minority businesses, Women's Business Enterprises, and labor surplus are used when possible. The County utilizes the following sites towards outreach for County Bidding opportunities for Small, Minority, Women Businesses: U.S. Small Business Administration, ESBD State of Texas Bid Posting Site, Associated General Contractors, Dodge Reports, Reed Construction Data, Texas Smart Buy Electronic State Business Daily Search (ESBD). Bk/Net, [MWBE@texas.agriculture.gov](mailto:MWBE@texas.agriculture.gov), Coop Vendors list, County Current Bidders list. (County will require Prime Contractors to follow all of the affirmative steps when Prime Contractor will be letting subcontracts. The requirements for Prime Contractors as laid out by the County will be targeted towards creating maximum participation for small, minority, and women's business enterprises as follows: will be on the solicitation list and will be notified when they are potential sources, will divide total requirements when economically feasible into smaller tasks or quantities, establish delivery schedules as requirements permit, contact the agencies as listed above as an outreach network towards attracting these types of businesses. This information will also be included in all contracts.) County utilization of/Section 3/ HUD (see Purchasing Website) addresses Davis-Bacon, Equal Employment, Vicinity Hiring Preference, Economic Opportunities, HUB, SBA, Local Vendor, and MWBE requirements.

**12.07 Procurement of Recovered Materials.** The County and (where applicable) its contractors will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. {See §200.322}.

County will (as per EPA 40CFR part 247) procure only items containing highest percentage of recovered materials practicable and allow for satisfactory competition based on the \$10,000 year threshold. County will establish affirmative procurement program for recovered materials.

**12.08 Contract Cost and Price.** The County will abide by the provisions of §200.324 (as required under County Resolution #20/90R2009), including, but not limited to performing a cost or price analysis and negotiating profit as discussed therein

**12.8.1 Negotiation Based on Cost Estimates; Negotiation of Profit.** In negotiating a contract price based on a cost analysis, the County will require that all estimated costs used to develop the negotiated price must be allowable costs under 2 CFR Part 200. Subpart E. A comparison between estimated costs and current customary market pricing will be analyzed in an effort to establish allowable cost and ultimately establish negotiated pricing. The County will also require that the profit element be negotiated separately, whether it is included as a separate price element or whether it is rolled into a lump sum price (or similar fixed price). Profit margin will also be compared relative to comparable current market rates to assess potential variances. This cost analysis will be achieved through verification of previous similar purchases, comparison with other public entities, recommendations from professional consultants or project Engineer, or data research (ie: Smart Procure) similar to the specific type of procurement. In addition and in order to establish a fair and reasonable profit, the County will also consider the contractor's risk and investment, complexity of work to be performed at a level of subcontracting, quality and track record of previous performance, and industry profit rates in the approximate SMSA /geographic area/or similar work. At the outset independent estimates will be obtained by the County before receiving Bids or Proposal this also applies to all sole source purchases. All estimates must be allowable subject to analysis as per conditions noted above.

**12.8.2 Cost Plus Percentage of Cost Prohibited.** The County will not enter into a cost plus percentage of cost contract, or a cost plus percentage of construction cost contract. (as per 200.324 d) Engineer and County will examine all Change order pricing as submitted. Profit margin will not be determined based on a percentage of cost and percentage of construction cost methods of contracting must not be used. Costs based on estimated costs of contracts under Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E Cost Principles of this part. County will reimburse Contractor's Direct and indirect Costs plus a Fixed fee for the project.

**12.9 Contract Provisions.** Pursuant to §200.327 the County will include in all federally-funded contracts, the applicable provisions described in Appendix 11 to 2 CFR Part 200 - Contract Provisions for non-Federal Entity Contracts under Federal Awards. When preparing a federally funded contract the County Purchasing Dept., Planning Dept., and County Attorney will review the required federal clauses in Appendix 11 and make sure that all clauses required/or the contract is included.

**12.10 Personnel Cost Calculation** Pursuant to 2 Code of Federal Regulations (CFR) Part 200, Subpart E the County adopted Resolution # 2019R02008 on February 5, 2019 - Policy and Procedure to Ensure Accurate Completion of Personnel Cost Calculation.

**12.11 Cost Price Analysis** Pursuant to 2 Code of Federal Regulations (CFR) Part 200, the County adopted Resolution # 2019R02009 on February 5, 2019 - Policy and Procedure to Ensure Cost Price Analysis requirement.

**12.12 Debarment Check** Pursuant to 2 Code of Federal Regulations (CFR) Part 200.318, the County adopted Resolution # 2019R02010 on February 5, 2019 - Policy and Procedure to Ensure Debarment Check is adequately performed.

**12.13 Single Proposal requirements** Proposal is reviewed for compliance. Determination is made by County as to benefit of resolution or RFP towards a more competitive solicitation. Pricing is reviewed relative to current market costs for comparison. If all is determined to be cost effective and advantageous to County, recommendation is made by Evaluation Committee to Commissioners Court for award. Commissioners Court must make a determination that price is fair and reasonable prior to awarding RFP. Prior to Court award of sole Bid, RFP, or RFQ County Purchasing Dept. will contact the federal awarding agency or pass-through entity (TCEQ for RESTORE projects) to request authorization for noncompetitive procurement under 2 CFR 200.320(c)(2) to proceed towards Commissioners Court approval. Informal Bids not exceeding \$14,999 will require at least 3 informal Bids for comparative competitive purposes. If the County is unable to obtain at least 3 competitive Bids or Proposals, it is unable to obtain more than one (1) Bid or Proposal the County Purchasing Dept. will review pricing relative to current market costs for comparison purposes (utilizing comparable bid results, engineer recent historic data, Smart Procure comparable data) will contact the federal awarding agency or pass-through entity (TCEQ, for RESTORE projects) to request authorization for noncompetitive procurement under 2 CFR 200.320(c)(2) prior to proceeding with Agenda towards Commissioners Court approval.

**12.14 Domestic Preferences for Procurement** County will (in awards of iron, aluminum, steel, cement and other goods / manufactured products produced in the United States) utilize and purchase from these suppliers and subawards with a preference towards purchases from these Companies. (see 200.322)

**12.15 Bid Bonds** Will always be required for construction contracts:

County Purchasing Act: Required

Payment Bond - \$25,000 + (2253.21)

Performance Bond - \$100,000 + (2253.21)

Bid Bond - a) If the contract is for the construction of public works or is under a contract exceeding \$100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in **the amount of five percent of the total contract (262.032)**

Federal funded projects: exceeding \$150,000 (on exception sought from the federal awarding agency. For all Federal funded projects \$150,000 and over Bid Bonds will be mandatory equivalent to five percent of the bid price. A performance bond and payment bond will also be required - both at 100 percent of contract price.

**12.16 Telecommunications and Surveillance Services or Equipment** Proposal is reviewed for compliance with 2 CFR Appendix II (K) 200-216 prior to proceeding with Agenda towards Commissioners Court approval. Determination is made by County as to ensure that neither loan or grant funds will be utilized for the purchase or obtaining Telecommunications and Surveillance Services or Equipment from one of the following Vendors or any of their subsidiaries or affiliates :

Huawei Technologies Co.

ZTE Corp.

Hytera Communications Corp.

Hangzhou Hikvision Digital Technology Co.

Dahua Technology Co.

as well as related services (Telecomm. or Video Surveillance provided by entities or using these Companies equipment. Additional Companies determined as by the Secretary of Defense, FBI, National Intelligence are to also be added to the restricted list of firms.

In addition, the vendors listed above will be identified to verify that these firms will not be utilized for contract extension/ renewal, essential components, critical technology, or components of a system.

Proposals will be reviewed for compliance with 2 CFR 200-471 prior to proceeding with Agenda towards Commissioners Court approval prior to obligating or expending funds. County will review all proposals related to Telecommunication and/or video surveillance equipment or service related costs in order to verify that costs associated with procuring, obtaining, extending, entering into, or renewing a contract for equipment, services, or systems are not utilized.