



**FEDERAL PROCUREMENT POLICY  
OF  
HARRIS COUNTY**

## **FOREWORD**

This document, in addition to any corresponding policy documents applicable to certain non-federally funded purchases or purchases by Other Entities, as such term is defined herein, is prepared in accordance with Texas Local Government Code (LGC) Section 262.011(o) which requires the purchasing agent to adopt rules and procedures necessary to implement the purchasing agent's duties, subject to approval by Commissioners Court.

This document is intended to be a general guideline for end users, primarily Harris County employees addressing purchasing requirements and general operating procedures. End users are encouraged to contact the Purchasing Office with questions concerning the procurement process. The Purchasing Office goal is to assure that end users are able to obtain needed goods and services in a timely, cost-effective manner in accordance with the LGC and other laws.

This document is not all-inclusive, and the Purchasing Office maintains a more detailed set of procedures, designed for internal use. Purchasing policies approved by Commissioners Court are on file in the Purchasing Office.

This policy is current as of the date of publication. As circumstances dictate, this document will be revised and updated. This document dated March 8, 2022 supersedes all previous County procurement policies to the extent of any previous policy application to purchases by Harris County or Purchasing Office other than non-federally funded purchases or other procurement policies expressly referenced in this policy.

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## I. OVERVIEW

The standards provided in this Federal Procurement Policy (Policy) are basic principles that Harris County, as well as its subrecipients, shall adhere to when contracting for needed items using Federal program grant funds. Harris County shall use its own documented procurement policies and procedures which are consistent with applicable State, local, and tribal laws and regulations, and which conform to applicable Federal law and standards.<sup>1</sup> If a recipient's policy does not contain all federal requirements, and the recipient intends to use federal funds to pay for such services, the policy must be amended in accordance with 2 C.F.R. 200. Thus, Harris County has developed this Federal Procurement Policy to include all applicable federal requirements contained in 2 C.F.R. 200.

Harris County is responsible for the ethical, appropriate, and effective procurement, regardless of funding source, of goods and services on behalf of its residents and communities. As the recipient of federal funding, Harris County shall follow federal, state and/or local laws on procurement, as applicable. In some cases, the Federal standards are stricter than State or local law. In such cases, Harris County shall comply with the applicable Federal law and the rules in 2 C.F.R. 200. If State or local law is stricter than Federal standards, then State or local law will apply. The regulations of 2 C.F.R. 200 require that a recipient follow the most restrictive rule applicable to it, whether it be its own procurement procedures, applicable state procurement laws or the procurement requirements set out in the federal rules.

The applicable regulations which shall be followed under this Policy include, but are not limited to, the following:

1. 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
2. 24 C.F.R. Part 570 – Community Development Block Grants
3. Texas Local Government Code Chapter 262 – Purchasing and Contracting Authority of Counties in Texas
4. Texas Local Government Code Chapter 263 – Sale or Lease of Property by Counties
5. Texas Local Government Code Chapter 271 – Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments
6. Texas Transportation Code Chapter 284 - Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties<sup>2</sup>
7. Texas Government Code Chapter 2251 – Prompt Payment Act
8. Texas Government Code Chapter 2252 – Contracts with Governmental Entity

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<sup>1</sup> 2 C.F.R. 200.318(a).

<sup>2</sup> Harris County and Harris County Toll Road Authority reserve the right to procure certain projects under this law or any other applicable law at the sole discretion of the Commissioners Court and/or the purchasing agent, as applicable. See also Texas Government Code Section 2269.009 (“This chapter does not apply to a project of a county under Chapter 284, Transportation Code, unless Harris County adopts an order electing to be governed by this chapter for a project to be developed by Harris County under Chapter 284.”).

9. Texas Government Code Chapter 2253 – Public Work Performance and Payment Bonds
10. Texas Government Code Chapter 2254 – Professional and Consulting Services
11. Texas Government Code Chapter 2269 – Contracting and Delivery Procedures for Construction Projects
12. Harris County Local Procurement Policy, 2022
13. Harris County Statement of Ethics, 2009, including but not limited to Texas Local Government Code Chapters 171 and 176 – Conflicts of Interest and Disclosure Requirements
14. 24 C.F.R. Part 75 – Economic Opportunities for Low- and Very Low-Income Persons, which implements Section 3 of the Housing and Urban Development Act of 1968
15. Texas Health & Safety Code Section 361.426 – Governmental Entity Preference for Recycled Products
16. Texas Government Code Section 140.003 – Specialized Local Entities
17. Texas Government Code Chapter 791 – Interlocal Cooperation

Harris County may, in its discretion, amend this Policy to conform with Federal, state or local governmental regulations, guidelines, policies, Executive Orders, Federal Register Notices, or for other reasons.

#### **A. APPLICABILITY**

This policy applies to the procurement of all supplies, equipment, construction, and services of and for Harris County ("County") related to the implementation and administration of federal grant awards and funding under federal laws and regulations. All procurement will be done in accordance with 2 C.F.R. 200.

#### **B. AUTHORITY**

As with its local funds, the Harris County Office of the purchasing agent shall direct the procurement activities of Harris County as required by applicable statutes and shall serve as the entity responsible for procuring all goods and services for Harris County for any federally-funded expenditures. The primary function of the Harris County Office of the purchasing agent, known as the "Purchasing Office", is to acquire goods and services, ensure quality standards at the lowest cost, and consider prevailing economic conditions and end-user requirements. The Purchasing Office establishes rules and procedures, subject to Commissioners Court approval, to provide procurement methods that ensure openness, fairness, and integrity. The Purchasing Office has been created for the purpose of providing a "checks and balances" system for the expenditure of public funds. The Purchasing Office strives to maintain consistent and open communication with the vendor community and the various supported County departments and agencies.

The Harris County Judge and Commissioners Court designate the purchasing agent, or other individuals as authorized in writing by Commissioners Court, as the Harris County "Contracting Officer". The Contracting Officer shall administer all procurement transactions. Accordingly, it is

the duty of the purchasing agent to properly procure all supplies, materials, and equipment, and to contract for all repairs to property used by Harris County (or a subdivision, officer, or employee of Harris County). Only the purchasing agent may make the purchase of supplies, materials, or equipment or make a contract for repairs.<sup>3</sup> Further, the purchasing agent shall supervise all purchases made by the competitive bid or proposal processes, and shall see that all purchased supplies, materials, and equipment are delivered to the proper County officer or department in accordance with the contract.<sup>4</sup> Violation of these laws by any County official or employee carries criminal penalties and removal from public office, in addition to potential employment impacts up to and including termination.<sup>5</sup>

### **C. OFFICE OF THE PURCHASING AGENT**

The Harris County purchasing agent is appointed by a Board comprised of three State District Judges and two members of Commissioners Court.<sup>6</sup>

The primary function of the Purchasing Office is to acquire goods and services meeting quality standards at the lowest cost, considering prevailing economic conditions and end user requirements. The purchasing agent establishes rules and procedures, subject to Commissioners Court approval, to provide procurement methods that ensure openness, fairness, and integrity. The Purchasing Office strives to maintain consistent and open communication with the vendor community and the various supported County departments and agencies. Every effort is made to operate in an efficient and economical manner consistent with existing laws and sound business practices.

The purchasing agent is an independent officer of Harris County. The Purchasing Office is responsible for ensuring that all County offices have the goods and services needed to perform the essential functions of their missions. Additionally, the Purchasing Office provides an expenditure control function, responsible for supervising the Commissioners Court contracting authority and ensuring compliance with Harris County Purchasing Act. Purchases made for Harris County use are generally exempt from the Texas sales tax.<sup>7</sup>

The Purchasing Office currently provides procurement services for the following governmental agencies/entities/departments:

1. Harris County Departments (including elected and appointed officers and officials, subject to certain exceptions<sup>8</sup>)

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<sup>3</sup> Texas Local Government Code Section 262.011(d).

<sup>4</sup> Texas Local Government Code Section 262.011(e).

<sup>5</sup> Texas Local Government Code Section 262.011(m) & 262.023.

<sup>6</sup> Texas Local Government Code Section 262.011(a).

<sup>7</sup> Texas Tax Code 151.309, as amended.

<sup>8</sup> This policy shall not apply to purchases within the exclusive authority of an official other than Harris County commissioners court; Tex. Atty. Gen. Op. JC0122 (1999).

2. Harris County Flood Control District<sup>9</sup>
3. Harris County Toll Road Authority<sup>10</sup>
4. Community Supervision and Corrections Department
5. Harris County Resources for Children and Adults
6. Harris County Hospital District dba. Harris Health System<sup>11</sup>
7. Greater Harris County 9-1-1 Emergency Network
8. Harris County Juvenile Probation Department
9. The Harris Center for Mental Health and IDD

This Policy applies to the above entities numbered 2 through 9 (“Other Entities”) to the extent such entities are: (i) subject to or have the option to complete procurement under the laws listed in Section I, above, and (ii) do not have a separate procurement policy applicable only to that entity and referenced in this Policy. The purchasing agent shall obtain a legal opinion on the procurement requirements applicable to any purchase by Other Entities when the purchasing agent has some reason to believe that the entity is not authorized by law to make a particular purchase in compliance with this Policy and the entity is not subject to a separate procurement policy applicable only to that entity and referenced in this federal Policy.

#### **D. ELECTION OF LAW FOR CONSTRUCTION PROJECTS BY OTHER ENTITIES**

Pursuant to Texas Government Code Section 2269.003(d), the Commissioners Court hereby elects, as evidenced by adoption of this policy, to permit Texas Government Code Chapter 2269 regarding contracting and delivery procedures for construction projects to supersede any other law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services, or to procurement of construction services pursuant to Section 49.273, Water Code for the purposes of procurement of public works or other construction projects by the Purchasing Office on behalf of the Harris County Flood Control District. The Commissioners Court as governing body of the district and on behalf of Harris County as administrator of the district hereby finds that this election is in the best interests of the district and Harris County to promote efficiency in procurement and consistent, fair and equal treatment of bidders and offerors.

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<sup>9</sup> The district was created by a special local law (Acts 1937, 45th Leg., ch. 360, Section 1) pursuant to article XVI, section 59 of the Texas Constitution. The district’s governing body is the Commissioners’ Court and the district is administered by Harris County.

<sup>10</sup> This policy does not apply to the extent the authority is a toll road corporation created under Texas Transportation Code Chapter 431 and such activity is exempt from competitive bidding requirements or restrictions under Section 431.110, Transportation Code. See also Texas Government Code Section 2269.007.

<sup>11</sup> See Harris County Health District Purchasing Manual, revised May 2011; See also Texas Local Government Code Section 262.011(h) (“Harris County purchasing agent is not required to make purchases for a municipal-county hospital or other joint undertaking of the municipality and county.”).

## **E. RESPONSIBILITIES OF THE OFFICE OF THE PURCHASING AGENT**

The purchasing agent shall direct the procurement activities of Harris County as required by applicable statutes. Accordingly, it is the duty of the purchasing agent to purchase all supplies, materials, and equipment, and to contract for all repairs to property used by Harris County (or a subdivision, officer, or employee of Harris County), except purchases or contracts required by law to be made by competitive bid. Only the purchasing agent may make the purchase of supplies, materials, or equipment or make a contract for repairs.<sup>12</sup> Further, the purchasing agent shall supervise all purchases made by the competitive bid or proposal processes, and shall see that all purchased supplies, materials, and equipment are delivered to the proper County officer or department in accordance with the purchase contract.<sup>13</sup> The purchasing agent shall also maintain an inventory of County property and transfer surplus County property between County departments as required.<sup>14</sup> Violation of these laws by any County official or employee carries criminal penalties.<sup>15</sup>

The duties of the purchasing agent include, but are not limited to, the following broad categories:

### **1. Procurement Principles & Requirements**

The Purchasing Office shall be responsible for upholding the necessary principles of procurement, which includes fulfilling the Purchasing Office mission, ensuring purchasing employees uphold the Code of Conduct and adhere to the Ethics Policy, and ensuring that there are no real or apparent conflicts of interest. The Purchasing Office shall also be responsible for identifying, establishing, documenting, and enforcing the appropriate procurement requirements. Among these requirements are the need for proper procurement planning, which may include providing value engineering, ensuring Harris County avoids duplicative or unnecessary purchases, considering the use of interlocal agreements.

### **2. Procurement Methods**

The Purchasing Office shall be responsible for identifying the appropriate method of procurement and following the necessary processes to fulfill the applicable requirements. This includes identifying whether a purchase will be an informal “unadvertised” purchase or a formal “advertised” procurement.

### **3. Contract Administration**

The Purchasing Office shall be responsible for the oversight and management of a purchase commitment,<sup>16</sup> which includes the initial procurement, renewal, termination of an existing contract, changes in existing contracts, contractor oversight, management of disputes.

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<sup>12</sup> Texas Local Government Code Section 262.011(d).

<sup>13</sup> Texas Local Government Code Section 262.011(e).

<sup>14</sup> Texas Local Government Code Section 262.011(i)-(j).

<sup>15</sup> Texas Local Government Code Section 262.011(m) & 262.023.

<sup>16</sup> See Texas Local Government Code Section 262.001.

#### **4. County Inventory Management**

The Purchasing Office shall be responsible for the storage, transfer, and/or disposal of County property, including recycling.<sup>17</sup> The Purchasing Office includes the Purchasing Services Division, which is responsible for County inventory records, transfer, sale, and disposition of County surplus, salvage, and/or abandoned or unclaimed property in accordance with Harris County Inventory Management Policy, included as Attachment A.<sup>18</sup> Additionally, Purchasing Services oversees Harris County’s recycling program.

#### **5. Minority and Women-Owned Business Enterprise Compliance**

The Purchasing Office shall coordinate with the Office of Economic Equity and Opportunity to further compliance with the requirements of 2 C.F.R. 200.321 regarding contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

### **F. PURPOSE**

This Policy is hereby established for Harris County (County) by official action of the Harris County Judge and Commissioners Court. For administrative program purposes, federal assistance covered by 2 C.F.R. 200 (such as CDBG-DR, FEMA, or FTA grants or funding) is considered “federal program grant funds.” As such, any procurements conducted using federal grant funds are governed by 2 C.F.R. 200. This Policy reflects applicable state and local laws and regulations, which at times may be more stringent than federal. When state and local procurement requirements exceed the minimum provisions for federal procurements, or alternatively the Federal laws exceed minimum state law provisions, Harris County and its subrecipients shall comply with the more stringent regulations or procedures.

The purpose of this Policy is to:

1. Provide for the fair and equitable treatment of all persons or firms involved in procurement by Harris County;
2. Assure that supplies, services and construction are procured efficiently, effectively and at the best prices available to Harris County;
3. Promote competition in contracting;
4. Provide safeguards for maintaining a procurement system of quality and integrity; and
5. Assure that Harris County’s procurement actions are in full compliance with applicable Federal laws and standards, Federal awarding agency regulations, and state and local laws.

## **II. PROCUREMENT PRINCIPLES & REQUIREMENTS**

### **A. MISSION STATEMENT**

The mission of the Purchasing Office is to acquire appropriate goods and services essential to the operation of Harris County government and certain other governmental agencies in a timely and

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<sup>17</sup> Texas Local Government Code Section 262.011(i).

<sup>18</sup> Texas Local Government Code Section 267.011(j); Texas Local Government Code Section 263.151 et seq., as amended; and Texas Code of Criminal Procedure 18.17, as amended.

prudent manner, considering quality, value, and economy. All purchases shall be made in compliance with Texas Local Government Code (LGC), Texas Government Code (TGC), and other relevant law and best business practices. Through anticipation of requirements, proper planning, preparation and development of its employees, the Purchasing Office actively pursues opportunities for cost savings, economies of scale and broadening and diversification of its vendor base. Harris County is responsible for complying with all requirements of federal funding received. Harris County shall manage and administer the federal funding to ensure it is expended in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination.<sup>19</sup>

## **B. REPORTING OF VIOLATIONS**

Harris County operates its business ethically and in compliance with the law. Employees of Harris County, or vendors doing business with Harris County, who believe he or she has witnessed any suspected ethical violation or fraud should immediately report the allegations to the Chief Assistant County Auditor – Audit Division. All suspected criminal conduct will be investigated and reported to the District Attorney’s Office or an appropriate law enforcement agency. Employees or vendors who report suspected ethical violations or fraud can do so without fear of retaliation. Retaliating against any employee or vendor for reporting suspected ethical violations or fraud is strictly prohibited.

## **C. CODE OF CONDUCT & CONFLICT OF INTEREST**

Harris County officials, employees, and affiliated parties who conduct business with or on behalf of Harris County shall comply with the Harris County Code of Conduct, included as Attachment B. Further, Purchasing employees must adhere to the highest standards of honor and integrity with regard to all business and personal relationships, in order that they may inspire the confidence of those served. These standards include but are not limited to the Harris County Personnel Policies & Procedures and any code of conduct policy adopted by or applicable to the Purchasing Office. Questionable practices, such as “bid shopping” or the extended free use of products under the guise of “demos”, must be avoided by all employees. Purchasing employees must adhere to the highest standards of honor and integrity with regard to all business and personal relationships, in order that they may inspire the confidence of those served.

Credibility and public confidence are vital throughout the purchasing and contracting system. Purchasing employees must realize the importance and dignity of the service rendered by the government and be aware of their own responsibilities as public servants. Every person employed by a public purchasing agency shall abide by a code of ethics. In accordance with State law and County purchasing requirements, County purchasing personnel and other employees involved in the purchasing process shall adhere to the following ethical standards.

Employees may not:

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<sup>19</sup> 2 C.F.R. 200.300(a)

- Participate in work on a contract by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family, has an actual or potential financial interest in the contract, including prospective employment;
- Solicit or accept money, credit, gifts, excessive entertainment, or other special considerations from an individual or business organization doing business with Harris County;
- Accept employment from a vendor or potential vendor while working for Harris County; or
- Knowingly disclose confidential information for personal gain.

The full Harris County Code of Conduct can be found here: <https://hrrm.harriscountytexas.gov/Documents/FINALCodeofConduct.pdf>

Harris County shall comply with the conflicts of interest policies in Texas Local Government Code, Chapter 171 and 176.

Except for eligible administrative or personnel costs, the general rule is that no employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients, who exercise or have exercised any functions or who are in a position to participate in a decision making process or gain inside information with regard to any purchase for or on behalf of Harris County, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

No Harris County employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of Harris County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Harris County may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.

Harris County shall comply with the conflicts of interest policies in Texas Local Government Code, Chapter 171 and 176 and 2 C.F.R. 200.318(c)(1).

Federal procurement regulations require that local governments and subrecipients maintain written standards of conduct covering conflicts of interest.<sup>20</sup> The general Conflict of Interest law for Texas

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<sup>20</sup> 2 C.F.R. 200.318(c)(1)

city and county officials, as well as officials of other Texas political subdivisions, is found in Chapter 171 and 176 of the Texas Local Government Code. At a minimum, in accordance with the federal conflict of interest regulations, the below conflict of interest requirements shall be followed by Harris County:

1. No employee, officer, agent of Harris County shall participate in the selection, award or administration of a contract if a conflict-of-interest, real or apparent, would be involved. Such a conflict would arise when:
  - a. The employee, officer or agent, any member of his or immediate family or 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 for award as defined by LGC Chapters 171 or 176 or any federal law or regulation;
  - b. Employees, officials, and/or agents of Harris County shall not act as surety for a business entity that has work, business, or a contract with the governmental entity or act as surety on any official bond required of an officer of the governmental entity;
  - c. Employees, officers and agents of Harris County shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements; and
  - d. Harris County may impose penalties, sanctions or other disciplinary actions to any employees, officers, or agents of Harris County for violations of these standards.

Any parent, affiliate, or subsidiary organization of Harris County that is not a state, local government, or Indian tribe must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest may include relationships with a parent company, affiliate, or subsidiary organization, which result in the entity being unable or appearing unable to be impartial in conducting a procurement action involving a related organization.

### **1. Potential Conflicts of Interest**

Any employee, contract employee or appointed member who participates in the recommendation, requisitioning, bid solicitation, evaluation, or otherwise takes part in the purchasing decision-making process and who has a whole or partial ownership in, or derives some income or personal benefit from the recommended or selected vendor should disclose the relationship as a potential conflict of interest. For the purposes of this section, acts of reciprocity or exchange of favors from which an employee derives some income or personal benefit shall be considered conflicts of interest.

In the event an outside consultant or contractor submits a bid or proposal on a project, of which the consultant or contractor was a previous contributor, other than an open forum, then the bids or proposals from that consultant or contractor shall be disqualified on the basis of conflict of interest.

#### **D. PUBLIC INFORMATION REQUESTS**

Harris County is subject to the Texas Open Records Act, also known as the Texas Public Information Act, Chapter 552 of Texas Government Code. Requests for information pertaining to Purchasing Office records must be in writing, directed to the purchasing agent, and be specific enough that information requested is easily identifiable. The purchasing agent adheres to current law in the handling of public information requests. For portions of documents identified as confidential by a vendor, Harris County must rely on advice, decisions and opinions of the Attorney General of the State of Texas relative to the disclosure of data or information.

No Federal awarding agency may place restrictions on Harris County that limits public access to the records of Harris County pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under Harris County's control except as required under 2 C.F.R. 200.315 Intangible property. Harris County's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.<sup>21</sup>

#### **E. HARRIS COUNTY FEDERAL PROCUREMENT MANUAL**

The purchasing agent, subject to the approval of the Commissioners Court, shall establish a set of federal procurement procedures in the "Harris County Federal Procurement Manual" (Manual) implementing this Policy. The Manual may include one or more documents as needed to account for multiple funding sources and procurement by Other Entities administered through the Purchasing Office. These procedures shall reflect applicable State and local law and conform to applicable Federal standards as described in 2 C.F.R. 200.317-327 as amended. The Manual and any attachments thereto constitute the method of implementation of this Policy.

#### **F. AVOIDING DUPLICATIVE OR UNNECESSARY PURCHASES**

The Purchasing Office shall avoid the acquisition of unnecessary or duplicative items by consolidating or breaking out procurements to obtain a more economical purchase, making an analysis of leases versus purchase alternatives, and conducting other appropriate analyses to determine the most economical approach, including consideration of consolidating or breaking out procurements to obtain a more economical purchase.<sup>22</sup>

The Purchasing Office shall be responsible for reviewing and monitoring all procurement methods to ensure the most economical and efficient use of federal funds. The purchasing agent shall also

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<sup>21</sup> 2 C.F.R. 200.338

<sup>22</sup> 2 C.F.R. 200.318(d)

maintain an inventory of County property and transfer surplus County property between County departments as required.<sup>23</sup>

#### **G. PROCUREMENT PLANNING**

The Purchasing Office shall also consider the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.<sup>24</sup>

#### **H. INTERLOCAL AGREEMENTS**

State laws allow procurement through federal, state, and local governmental agencies as well as cooperative purchasing organizations.<sup>25</sup> The purchasing agent is the authorized representative of Harris County to make purchases through those agency contracts or cooperative purchasing organizations, at the purchasing agent's discretion and subject to approval of Commissioners' Court for Interlocal agreements if required by law.<sup>26</sup> To foster greater economy and efficiency and in accordance with efforts to promote cost-effective use of shared services across the federal government, the purchasing agent may opt to enter into state and local interlocal agreements or intergovernmental agreements, where appropriate, for procurement or use of common or shared goods and services,<sup>27</sup> provided the following conditions are met:

- i. The agreement provides for greater economy and efficiency and results in cost savings. Before utilizing an interagency agreement for procurement, Harris County shall compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;
- ii. The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for Harris County to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining factor. Intergovernmental agreements may be used only for the procurement and use of common supplies and services. If services, required by Harris County, are provided by the State or a locality and are part of that government's normal duties and responsibilities, it is permissible for Harris County to share the services and cost of staff under an agreement;
- iii. Harris County shall take steps to ensure that any supplies or services obtained using another agency's contract were purchased in compliance with 2 C.F.R. 200;
- iv. Harris County's procurement files shall contain a copy of the Interlocal Agreement and documentation showing that cost and availability were evaluated before the agreement

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<sup>23</sup> Texas Local Government Code Section 262.011(i)(j)

<sup>24</sup> 2 C.F.R. 200.318(f)

<sup>25</sup> Texas Local Government Code Sections 271.081-083 and 271.101-103; See also Texas Government Code Section 793.002.

<sup>26</sup> Texas Government Code Section 791.011(d)(1).

<sup>27</sup> 2 C.F.R. 200.318(e)

was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and

v. The agreement shall be between Harris County and a state or local governmental agency.

When using interlocal or cooperative purchasing, the purchasing agent is required to effect as much competition as practical for the circumstances and shall ensure compliance pursuant to Texas Local Government Code Sections 271.081-083 and Sections 271.101 – 103, to the extent applicable. Harris County may not use an interlocal contract and add extra or unrelated goods or services that were not part of the original contract. Harris County shall review any standard agreements to make sure that all applicable procurement regulations are met and that Harris County’s interests are protected. After entering into an agreement, Harris County shall compare cost and availability annually to determine if the terms of the agreement continue to pass the tests of economy and efficiency.

### **I. VALUE ENGINEERING**

The Purchasing Office shall determine which procurement method provides the best value for Harris County.<sup>28</sup> Harris County shall also use value engineering methods for construction projects of sufficient size to offer reasonable opportunities for cost reductions.<sup>29</sup>

The practice of value engineering includes a certain amount of expense which must be justified by potential cost savings. Accordingly, Harris County shall justify the need for value engineering and must be able to demonstrate that there is a distinct opportunity for financial benefit to warrant the added cost of a value engineering effort.

### **J. RESPONSIBILITY**

The Purchasing Office shall award contracts only to responsible and eligible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.<sup>30</sup>

The Purchasing Office shall not award any contract until the prospective contractor, i.e., low responsive bidder or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Have the necessary organization, experience, and operational controls, and technical skills, or the ability to obtain them;
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

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<sup>28</sup> Texas Government Code Section 2269.056

<sup>29</sup> 2 C.F.R. 200.318(g)

<sup>30</sup> 2 C.F.R. 200.318(h)

- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics; and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended or debarred.

The Purchasing Office shall conduct research to determine that a prospective contractor is responsible.

#### **K. RECORDKEEPING**

The Purchasing Office shall maintain records sufficient to detail the history of each procurement action.<sup>31</sup> These records shall include, but are not limited to, the following:

- Rationale for the method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and
- The basis for the contract price.

The records should also include a justification for lack of competition when competitive bids or offers are not obtained, and the basis for the award cost or price.

#### **L. ACCESS TO RECORDS**

Harris County shall comply with requirements allowing access to records, which require that the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, have the right of access to any documents, papers, or other records of Harris County which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts.<sup>32</sup> The right also includes timely and reasonable access to Harris County's personnel for the purpose of interview and discussion related to such documents.<sup>33</sup>

Harris County shall make available, upon request of the Federal awarding agency or pass-through entity, the technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.<sup>34</sup> Additionally, Harris County shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review,

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<sup>31</sup> 2 C.F.R. 200.318(i)

<sup>32</sup> 2 C.F.R. 200.337

<sup>33</sup> 2 C.F.R. 200.337(a)

<sup>34</sup> 2 C.F.R. 200.325(a)

procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- Harris County’s procurement procedures or operation fails to comply with the procurement standards defined in 2 C.F.R. 200;<sup>35</sup>
- The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;<sup>36</sup>
- The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;<sup>37</sup>
- The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;<sup>38</sup> or
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.<sup>39</sup>

All contracts awarded by Harris County shall include a provision to the effect that Harris County, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, have the right of access to any documents, papers, or other records of contractors which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. Harris County shall require contractors to maintain all required records for five (5) years from the date of execution of the closeout agreement for a grant.

#### **M. PROTESTS & DISPUTES**

Harris County alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve Harris County of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of Harris County unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.<sup>40</sup>

The Purchasing Office shall fully consider and promptly judge protests relating to Harris County’s solicitation procedures, solicitation documents, or recommendations for award of a contract in accordance with Harris County’s Protest Policy & Procedures, adopted May 2020. Bidders or offerors shall be advised of these procedures in the solicitation documents. These procedures shall

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<sup>35</sup> 2 C.F.R. 200.325(b)(1)

<sup>36</sup> 2 C.F.R. 200.325(b)(2)

<sup>37</sup> 2 C.F.R. 200.325(b)(3)

<sup>38</sup> 2 C.F.R. 200.325(b)(4)

<sup>39</sup> 2 C.F.R. 200.325(b)(5)

<sup>40</sup> 2 C.F.R. 200.318(k)

apply to all procurement and contract actions, including sole source awards and those resulting from formal competitive bidding and competitive proposals procedures.

Any vendor objecting to solicitation procedures, solicitation documents, or an award recommendation may file a “protest” in accordance with Harris County’s Protest Policy & Procedures. In order for a vendor’s protest to be considered valid, the protest must adhere to the requirements outlined in the Harris County Protest Policy & Procedures, included as Attachment C, and found on the Harris County Purchasing website at:

<https://purchasing.harriscountytexas.gov/Documents/Harris%20County%20Protest%20Policy%206.9.20.pdf>

If the protest does not comply with the requirements of the Harris County Protest Policy & Procedures, Harris County may reject the protest without further review. If the protest is timely and complies with the Harris County Protest Policy & Procedures, the purchasing agent, or other designated Harris County staff member, shall review the protest and all other relevant information. The purchasing agent will provide a written decision to the protestor.

The procedure and time limits set forth in the Harris County Protest Policy & Procedures are mandatory and are the sole and exclusive remedy in the event of a protest. Failure to comply with the procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the protest, including filing a legal proceeding.

#### **N. ELIGIBILITY & DEBARMENT STATUS**

Prior to the award of a contract with a contractor, Harris County shall verify eligibility and debarment status. Harris County shall not enter into any contract with any organization which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension”.

The Texas General Land Office, and therefore Harris County, is federally mandated to adhere to the directions provided in the President’s Executive Order (EO) 13224, which prohibits transactions with persons who commit, threaten to commit, or support terrorism. Harris County shall ensure all procurements are awarded in compliance with the State of Texas statutes and rules relating to procurement and determine that contractors are not listed on the federal government's terrorism watch list as described in Executive Order 13224.

#### **O. COMPETITION**

Texas law prohibits all separate, sequential, or component purchases made with the intent of avoiding the competitive procurement requirements.<sup>41</sup> Harris County shall not break down requirements aggregating more than the Simplified Acquisition Threshold (or the Micro Purchase threshold) into multiple purchases that are less than the applicable threshold (commonly called “bid splitting” or “unbundling”) merely to permit use of the small purchase procedures or avoid any requirements that apply to purchases that exceed those thresholds. However, larger

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<sup>41</sup> Texas Local Government Code Section 262.023(c)

requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in Harris County’s procurements.

All procurement transactions, regardless of dollar amount, shall be conducted so as to provide “maximum full and open competition” consistent with the standards of 2 C.F.R. 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft estimates, specifications, requirements, statements of work, or invitations for bid or requests for proposals shall be excluded from competing for such procurements.<sup>42</sup>

To the greatest extent feasible Harris County shall avoid situations considered to be restrictive of competition, which include, but are not limited to, the following:

- Placing unreasonable requirements on firms in order for them to qualify to do business;<sup>43</sup>
- Requiring unnecessary experience and excessive bonding;<sup>44</sup>
- Noncompetitive pricing practices between firms or between affiliated companies;<sup>45</sup>
- Noncompetitive awards to consultants that are on retainer contracts;<sup>46</sup>
- Organizational conflicts of interest;<sup>47</sup>
- 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;<sup>48</sup> and
- Any arbitrary action in the procurement process.<sup>49</sup>

Harris County shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.<sup>50</sup>

Harris County shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to

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<sup>42</sup> 2 C.F.R. 200.319(b) and Texas Attorney General Opinion Nos. JM-940 and JM-282, both cited in Texas Attorney General Opinion No. JC-0124

<sup>43</sup> 2 C.F.R. 200.319(b)(1)

<sup>44</sup> 2 C.F.R. 200.319(b)(2)

<sup>45</sup> 2 C.F.R. 200.319(b)(3)

<sup>46</sup> 2 C.F.R. 200.319(b)(4)

<sup>47</sup> 2 C.F.R. 200.319(b)(5)

<sup>48</sup> 2 C.F.R. 200.319(b)(6)

<sup>49</sup> 2 C.F.R. 200.319(b)(7)

<sup>50</sup> 2 C.F.R. 200.319(c)

be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers shall be clearly stated.<sup>51</sup> Specifications must describe functional needs, and may not:

- Include unrelated, non-functional requirements, such as participation in other government programs, estimates of economic benefit conferred upon a local economy, or a requirement that independent contractors provide certain benefits to their employees;<sup>52</sup> or
- Include requirements that restrict competition. Therefore, brand names may not be used except to indicate a level of quality. Specifications "may not restrict material specifications to suit the products of only one vendor if other vendors have similar products of equal quality."<sup>53</sup>

Additionally, Harris County shall identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or Statements of Qualifications.<sup>54</sup>

#### **P. VENDOR LIST**

Harris County supports the principles of equal opportunity. Harris County encourages the participation of all vendors in the procurement of supplies, materials, equipment, and services. The purchasing agent maintains an "outreach" program designed to encourage participation in County procurement. To introduce vendors to Harris County, the purchasing agent conducts seminars to aid smaller and developing businesses in doing business with Harris County. Additionally, the Purchasing Office participates in several local events and seminars designed to promote opportunities for small businesses. Purchasing employees are encouraged to contact potential new vendors weekly so that the benefit of governmental purchasing is made available to as many vendors as possible.

Harris County may maintain a list of vendors and shall distribute notice of contract opportunities to the list. Harris County shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Harris County shall not preclude potential bidders or offerors from qualifying during the solicitation period and shall accept bids or offers from any qualified and responsible vendor not on an existing vendor list.<sup>55</sup>

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<sup>51</sup> 2 C.F.R. 200.319(d)(1)

<sup>52</sup> Texas Attorney General Opinion No. JC-0124

<sup>53</sup> Texas Attorney General Opinion No. JC-0124

<sup>54</sup> 2 C.F.R. 200.319(d)(2)

<sup>55</sup> 2 C.F.R. 200.319(e)

## **Q. METHODS OF PROCUREMENT**

Harris County shall select the method of procurement depending on the anticipated expenditure amounts and the type of service or materials being procured in accordance with the requirements below.

### **1. Informal Procurement Methods**

When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT) (e.g., currently set at purchases of \$250,000 or less) or a lower threshold established by Harris County, formal procurement methods are not required. Harris County may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

#### **a. Micro Purchases**

Micro purchases are acquisitions of products or services where the aggregate acquisition price does not exceed the micro purchase threshold.<sup>56</sup> The current federal micro purchase threshold has been set at \$10,000.<sup>57</sup> Harris County's current local micro purchase threshold has been set at \$5,000 according to Harris County's Local Procurement Policy. To the extent practicable, Harris County shall distribute micro-purchases equitably among qualified suppliers.<sup>58</sup> Micro-purchases may be awarded without soliciting competitive quotations if Harris County considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly.<sup>59</sup>

Harris County is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by Harris County must be authorized or not prohibited under state or local laws or regulations. Harris County may establish a threshold higher than the federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with the below.<sup>60</sup>

Harris County may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. Harris County may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the federal awarding agency and auditors in accordance with 2 C.F.R. 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following: (i) A qualification as a low-risk auditee, in accordance with the criteria in 2 C.F.R. 200.520 for the most recent audit; (ii) An annual internal institutional risk assessment to identify,

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<sup>56</sup> 2 C.F.R. 200.1

<sup>57</sup> 2 C.F.R. 200.1; 48 C.F.R. 2.101

<sup>58</sup> 2 C.F.R. 200.320(a)(1)(i)

<sup>59</sup> 2 C.F.R. 200.320(a)(1)(ii)

<sup>60</sup> 2 C.F.R. 200.320(a)(1)(iii)

mitigate, and manage financial risks; or, (iii) For public institutions, a higher threshold consistent with state law.<sup>61</sup>

Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency (as defined in 2 C.F.R 200.1) for indirect costs. Harris County must submit a request with the requirements included in the above paragraph of this section. The increased threshold is valid until there is a change in status in which the justification was approved.<sup>62</sup>

However, for construction work subject to 40 U.S. Code Chapter 31, the micro purchase is set at \$2,000. Prime construction contracts in excess of \$2,000 awarded by Harris County or its subrecipients must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).<sup>63</sup>

### **b. Small Purchases**

Small purchases are the relatively simple and informal procurement methods for securing services, supplies, or other property where the aggregate acquisition price is more than the micro-purchase threshold but does not exceed the Simplified Acquisition Threshold. The current Simplified Acquisition Threshold has been set at \$250,000.<sup>64</sup> However, Harris County's Simplified Acquisition Threshold has been set at \$50,000.<sup>65</sup> If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.<sup>66</sup>

## **2. Formal Procurement Methods**

When the value of the procurement for property or services under a federal financial assistance award exceeds the Simplified Acquisition Threshold of \$50,000<sup>67</sup> as set by Harris County, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with below.

The purchasing agent is authorized to publish notice in accordance with this Policy and Texas Local Government Code Section 262.026 or other applicable law for any formal procurement method without prior approval from the Commissioners Court of the notice, procurement documents and/or specifications. The purchasing agent is also authorized to extend a project due date, including extensions due to errors in the notice or procurement documents identified by the Purchasing office or County Attorney's Office.<sup>68</sup> All procurement responses received on a day when Commissioners Court is not scheduled for a regular meeting are automatically

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<sup>61</sup> 2 C.F.R. 200.320(a)(1)(iv)

<sup>62</sup> 2 C.F.R. 200.320(a)(1)(v)

<sup>63</sup> 2 C.F.R. Appendix II to Part 200 (D)

<sup>64</sup> 41 U.S. Code § 134

<sup>65</sup> Texas Local Government Code Section 262.023

<sup>66</sup> 2 C.F.R. 200.320(a)(2)(i)

<sup>67</sup> Texas Local Government Code Section 262.023

<sup>68</sup> Texas Local Government Code Section 262.026(a); Original delegation of authority effective September 1, 1999.

referred to the Purchasing Office for evaluation and preparation of an award recommendation letter. Any action taken to publish notice, extend the due date for any formal procurement response, or receipt of procurement responses via automatic referral to the Purchasing Office should be transmitted to the Commissioners Court at their next regular meeting. The purchasing agent or other person, entity or department authorized to make procurement award recommendations to the Commissioners Court under this Policy shall present procurement responses to the Commissioners Court in the form of a summary of responses and a formal award recommendation letter, except in those cases where responses are received the same day as a Commissioners Court regular meeting and the procurement documents require award the same day as opening of the procurement responses.<sup>69</sup>

The following formal methods of procurement are used for procurement of property or services above the Simplified Acquisition Threshold:

**a. Sealed Bids**

Sealed bids (sometimes known as “formal advertising”) are used when the goods or services are expected to exceed the Simplified Acquisition Threshold. Under sealed bids, Harris County shall publicly solicit bids, through an Invitation for Bid (IFB), and award a firm fixed price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is responsive and the lowest in price.<sup>70</sup> The sealed bid method shall be Harris County’s preferred method for procuring construction, provided the following conditions are present:<sup>71</sup>

- A complete, adequate, and realistic specification or purchase description is available;<sup>72</sup>
- Two or more responsible bidders are willing and able to compete effectively for the business;<sup>73</sup> and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.<sup>74</sup>

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the IFB must be publicly advertised.<sup>75</sup> Pursuant to Texas Local Government Code Section 262.021, the IFB must be advertised at least once a week in a local newspaper of general circulation in Harris County, with the first publication occurring before the 14th day before the date of bid opening;

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<sup>69</sup> Texas Local Government Code Chapter 262.027.

<sup>70</sup> 2 C.F.R. 200.320(b)(1)

<sup>71</sup> 2 C.F.R. 200.320(b)(1)(i)

<sup>72</sup> 2 C.F.R. 200.320(b)(1)(i)(A)

<sup>73</sup> 2 C.F.R. 200.320(b)(1)(i)(B)

<sup>74</sup> 2 C.F.R. 200.320(b)(1)(i)(C)

<sup>75</sup> 2 C.F.R. 200.320(b)(1)(ii)(A)

- The IFB, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;<sup>76</sup>
- All bids will be opened at the time and place prescribed in the IFB, and the bids must be opened publicly;<sup>77</sup>
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of;<sup>78</sup> and
- Any or all bids may be rejected if there is a sound documented reason.<sup>79</sup>

The purchasing agent is authorized by Commissioners Court to extend the due date of an advertised project when circumstances require an extension and when the extension will be in the best interest of Harris County.<sup>80</sup> Competitive bidding requires approval of the contract by the Commissioners Court before final execution of a contract.

#### **b. Competitive Proposals**

Also called contracting by negotiation, the competitive proposal method is used for requirements exceeding the Simplified Acquisition Threshold when conditions are not appropriate for sealed bidding. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.<sup>81</sup> The competitive proposals process may be undertaken only under the supervision of the purchasing agent.

When competitive proposals are deemed appropriate, Harris County shall utilize one of two competitive proposal methods: a Request for Proposal (“RFP”) or a Request for Qualifications (“RFQ”). An RFP is a form of procurement in which both qualifications and price are requested and used as evaluation factors. An RFQ is a form of procurement in which only technical qualifications are evaluated and price is not requested nor used as an evaluation factor. In each case, the Purchasing Office shall coordinate and oversee the appointment of a committee responsible for evaluation and negotiation of RFP and RFQ responses. Members of an evaluation committee shall include at least one person from the Purchasing Office, one person from the using department(s), and one or more persons from a technical committee, if applicable; others may be appointed as appropriate. The Evaluation Committee members shall be required to comply with Harris County’s Evaluation Committee Guidelines, included as Attachment D.

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<sup>76</sup> 2 C.F.R. 200.320(b)(1)(ii)(B)

<sup>77</sup> 2 C.F.R. 200.320(b)(1)(ii)(C)

<sup>78</sup> 2 C.F.R. 200.320(b)(1)(i)(D)

<sup>79</sup> 2 C.F.R. 200.320(b)(1)(i)(E)

<sup>80</sup> Texas Local Government Code Section 262.026

<sup>81</sup> 2 C.F.R. 200.320(b)(2)

**i. Request for Proposal (RFP)**

Under the Competitive Proposals method, Harris County may publicly solicit proposals through an RFP. An RFP is appropriate to obtain professional services that do not include architectural or engineering services, such as consulting, construction management, estimating, or other technical or specialized services. RFPs are a form of procurement in which both qualifications and price are requested and used as evaluation factors.

Generally, a fixed price or cost reimbursement contract will be awarded to the responsive and responsible offeror whose proposal is most advantageous to the program and conforms with all the material terms and conditions of the RFP, with price and other factors considered.<sup>82</sup>

If this method is used, the following requirements shall apply:

- RFPs shall be publicized and identify all evaluation criteria and factors for award and their relative importance. Any response to publicized requests for proposals shall be considered to the maximum extent practical;<sup>83</sup> and
- Proposals shall be solicited from an adequate number of qualified sources;<sup>84</sup>
- Harris County shall have a written method for conducting technical evaluations of the proposals received and for selecting recipients.<sup>85</sup>

**ii. Request for Qualifications (RFQ)**

Under the Competitive Proposals method, Harris County may publicly solicit for Statements of Qualifications through an RFQ. Qualification-based procurement is only allowable in the selection of architectural, engineering services, or surveying services.<sup>86</sup> RFQs are a form of procurement in which only technical qualifications are evaluated and price is not requested nor used as an evaluation factor. Generally, a fixed price or cost reimbursement contract shall be awarded to the most qualified, responsive, and responsible offeror, subject to negotiation of fair and reasonable compensation.

If this method is used, the following requirements shall apply:

- RFQs shall be publicized and identify all evaluation criteria and factors for award and their relative importance. Any response to publicized requests for qualifications shall be considered to the maximum extent practical;<sup>87</sup> and
- Qualifications shall be solicited from an adequate number of qualified sources;
- Harris County shall have a written method for conducting technical evaluations of the Qualifications received and for selecting recipients.

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<sup>82</sup> 2 C.F.R. 200.320(b)(2)(iii)

<sup>83</sup> 2 C.F.R. 200.320(b)(2)(i)

<sup>84</sup> 2 C.F.R. 200.320(b)(2)(i)

<sup>85</sup> 2 C.F.R. 200.320(b)(2)(ii)

<sup>86</sup> 2 C.F.R. 200.320(b)(2)(iv) and Texas Government Code Section 2254.004

<sup>87</sup> 2 C.F.R. 200.320(b)(2)(i)

### **c. Noncompetitive Procurements**

Procurement by noncompetitive proposals may be used only when one or more of the following circumstances apply:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;<sup>88</sup>
- The item is available only from a single source;<sup>89</sup>
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;<sup>90</sup>
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from Harris County;<sup>91</sup> or
- After solicitation of a number of sources, competition is determined inadequate.<sup>92</sup>

### **d. Alternative Procurement Methods**

Harris County may use alternative procurement methods, but shall ensure there is sufficient justification for the alternative procurement method and shall proceed with caution. Regardless of state law authorization for alternative procurement methods, procurement subject to this federal policy shall comply with federal requirements applicable to a particular project or funding source.

#### **a. Job Order Contracting**

Job Order Contracting is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of buildings when the work is of a recurring nature, but the delivery times, type, and quantities of work required are indefinite.<sup>93</sup> Under a Job Order Contract, Harris County awards a base contract with pre-established tasks and prices, specifications, and general contract conditions.

A Job Order Contract provides for the delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period. Harris County may use this type of contract when it cannot predetermine, above a specified minimum, the precise quantities of supplies or services that it will require during the contract period. Harris County shall use a Job Order Contract only when a recurring need is anticipated.

Harris County may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if the work is of a recurring nature (multiple orders for items or services will be needed) but the delivery times are indefinite. Job Order Contracts may be awarded using sealed bidding or competitive

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<sup>88</sup> 2 C.F.R. 200.320(c)(1)

<sup>89</sup> 2 C.F.R. 200.320(c)(2)

<sup>90</sup> 2 C.F.R. 200.320(c)(3)

<sup>91</sup> 2 C.F.R. 200.320(c)(4)

<sup>92</sup> 2 C.F.R. 200.320(c)(5)

<sup>93</sup> Texas Government Code Section 2269.401

proposals as appropriate. Harris County shall establish the maximum aggregate contract price when it advertises the contract opportunity. Commissioners Court shall approve each job, task, or purchase order that exceeds \$500,000.

**b. Alternates**

Harris County should generally not request “alternate” bids, i.e., two different systems or types of projects. However, in an effort to remain flexible in the bidding process for construction activities, Harris County may set in place alternative deductibles or alternate add-ons.

When necessary because of limited available funding, Harris County may implement alternative deductibles by specifying the most expensive system as the base bid, and then listing deductive alternates in inverse priority order. Thus, in the case of limited funding, deductive alternates may be taken in numerical order as listed until the award can be made with available funds. These items must be clearly marked as such and, in the event of bids received over budget, may be “deducted” from the scope of the project.

Conversely, Harris County may specify a list of potential “add-on” items to the base bid. These add-on items may be added to the scope of the project if sufficient funding is available. Regardless of the method used, all alternative deductibles/additions must be assigned a number in order of preference to be either eliminated or added. No items may be eliminated or added from a bid process if they were not initially indicated as an alternative deductible or alternate add-on. Alternate deductibles should include, but not be limited to, items Harris County may be able to complete on its own or items that would not have an adverse effect on the project if omitted.

**R. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN’S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS**

It is the policy of Harris County that Minority and Women Business Enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Harris County and its subrecipients and contractors shall take all necessary affirmative steps to assure that minority businesses, small businesses, women's business enterprises, historically underutilized businesses, and labor surplus area firms are used when possible.<sup>94</sup> Affirmative steps shall include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;<sup>95</sup>
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;<sup>96</sup>

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<sup>94</sup> 2 C.F.R. 200.321(a)

<sup>95</sup> 2 C.F.R. 200.321(a)(1)

<sup>96</sup> 2 C.F.R. 200.321(a)(2)

- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;<sup>97</sup>
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;<sup>98</sup>
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;<sup>99</sup> and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.<sup>100</sup>

Language supporting equal opportunity shall be included in the solicitation specifications and contract documents, contractor eligibility shall be verified, required documentation shall be secured, and compliance shall be monitored.

## **S. CONTRACT COST AND PRICE**

The Purchasing Office shall ensure procedures result in the purchase of goods and services at a fair and reasonable price. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.<sup>101</sup> Costs must meet three critical tests. The costs must be:

1. *Allowable*. The applicable cost principles will usually state whether a type of cost is allowable or not.<sup>102</sup>
2. *Allocable*. Costs are logically related to or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.<sup>103</sup>
3. *Reasonable*. What a prudent business would pay in a competitive marketplace. A cost can be allowable, allocable and still not be what a prudent businessperson would pay.<sup>104</sup>

### **1. Independent Cost Estimate**

An Independent Cost Estimate (ICE) is the estimated cost of a proposed expenditure. An ICE assists in evaluating the cost reasonableness of a contractor's proposed costs or prices on an objective basis and is a required procedure when conducting procurements that exceed the Simplified Acquisition Threshold, including contract modifications.<sup>105</sup>

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<sup>97</sup> 2 C.F.R. 200.321(a)(3)

<sup>98</sup> 2 C.F.R. 200.321(a)(4)

<sup>99</sup> 2 C.F.R. 200.321(a)(5)

<sup>100</sup> 2 C.F.R. 200.321(a)(6)

<sup>101</sup> 2 C.F.R. 200.404

<sup>102</sup> 2 C.F.R. 200.403

<sup>103</sup> 2 C.F.R. 200.405

<sup>104</sup> 2 C.F.R. 200.404

<sup>105</sup> 2 C.F.R. 200.324(a)

Before issuing a solicitation, the Purchasing Office shall work with end users to develop an ICE for the products or services to be purchased. If the Purchasing Office intends to require a breakdown of estimated costs, the in-house ICE should be broken down into the various cost elements.

## **2. Price and Cost Analysis**

The Purchasing Office shall work with end users to perform a price or cost analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications.<sup>106</sup> The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.<sup>107</sup>

A price analysis is essentially a comparison of lump sum pricing, or the process of examining and evaluating the total proposed price without evaluating its separate cost elements and proposed profit.<sup>108</sup> Price analysis shall be used to verify that the overall price offered is fair and reasonable. Price analysis must be completed in all cases listed below to determine the reasonableness of the proposed contract price:

1. Sealed bid with 2 or more responsible bidders and for which the low bidder was selected; or
2. Competitive proposals (RFPs) with 2 or more offerors where price was part of the proposal.

A cost analysis is the review and evaluation of any separate cost elements (labor, material, administrative) and profit or fee in an offeror's bid or proposal, as needed to determine a fair and reasonable price and to determine the degree to which the offeror's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency and to ensure the costs are allowable, allocable, and related to the requirements.

A cost analysis shall be used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required, such as when an offeror is required to submit individual cost elements e.g., under architectural or engineering services contracts.<sup>109</sup> Harris County must perform a cost analysis for any procurement action in excess of the Simplified Acquisition Threshold in which there is no price competition. A cost analysis will always be necessary under the following circumstances, unless cost reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation:

- When adequate price competition is lacking, such as under a Request for Qualifications;
- For non-compete or sole source procurements; or

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<sup>106</sup> 2 C.F.R. 200.324(a)

<sup>107</sup> 2 C.F.R. 200.324(a)

<sup>108</sup> Buying Right CDBG-DR and Procurement: A Guide to Recovery

<sup>109</sup> Buying Right CDBG-DR and Procurement: A Guide to Recovery

- For contract modifications or change orders which exceed the Simplified Acquisition Threshold.

### **3. Negotiation of Profit**

The Purchasing Office shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.<sup>110</sup>

## **T. BONDS / GUARANTEES**

For projects under the Simplified Acquisition Threshold, there are no federal or local requirements for bid, payment, or performance bonds. However, for construction or building improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, Harris County's bonding policy must adequately protect the Federal interest.<sup>111</sup> Bonding companies used by a contractor to provide payment and bonds must be listed with the Department of the Treasury's Listing of Approved Sureties. Performance and Payment Bonds required by Texas Government Code Section 2253.021 must be executed by a corporate surety in accordance with V.T.C.A., Insurance Code §§ 3503.001 to 3503.005.

### **1. Bid Bonds**

For construction, public works, or facility improvement contracts expected to exceed \$100,000, the Purchasing Office shall require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the bid price.<sup>112</sup> The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.<sup>113</sup> A bid bond must be executed with a surety company authorized to do business in this state.

### **2. Performance Bonds**

For construction, public works, or facility improvement contracts exceeding \$50,000, the Purchasing Office shall require a performance bond on the part of the contractor for 100 percent of the contract price.<sup>114</sup> A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.<sup>115</sup> The performance bond is:

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<sup>110</sup> 2 C.F.R. 200.324(b)

<sup>111</sup> 2 C.F.R. 200.326

<sup>112</sup> Texas Local Government Code Section 262.032

<sup>113</sup> 2 C.F.R. 200.326(a)

<sup>114</sup> Texas Local Government Code Section 262.032

<sup>115</sup> 2 C.F.R. 200.326(b)

- Solely for the protection of Harris County;
- In the entire amount of the contract; and
- Conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.<sup>116</sup>

### 3. Payment Bonds

If a project is for a construction, public works, or facility improvement contract, contractors are required to provide a payment bond if the contract is in excess of \$25,000.<sup>117</sup> The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. The payment bond is:

1. In the entire amount of the contract; and
2. Solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material.

If a payment bond is required per the stipulations above, contractors must furnish a payment bond with good and sufficient sureties, for 100 percent of the contract price, and such bond, among other conditions, must assure payment as required by law for any and all labor and materials, incorporated, consumed or used in connection with the contract, whether by subcontractor or otherwise.

A bond executed for a public work contract with Harris County, must be payable to and its form must be approved by Harris County.

If the contract is for \$50,000 or less, Harris County may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to Harris County.

### **U. PREVAILING WAGES AND DAVIS-BACON AND RELATED ACTS**

When applicable, for any contract in excess of \$2,000, Harris County shall comply with the Davis-Bacon Act at 40 U.S. Code 3141–3148 and Texas Government Code Chapter 2258. When required by Federal program legislation, construction contracts in excess of \$2,000 awarded by Harris County shall require compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 C.F.R. part 3).

In accordance with the statute, for each contract subject to prevailing wages, 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

<sup>116</sup> Texas Government Code Section 2253.021

<sup>117</sup> Texas Government Code Section 2253.021

be required to pay wages not less than once a week. When prevailing wages have been determined to be applicable, the Purchasing Office shall 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. Harris County shall report all suspected or reported violations to the Federal awarding agency.

Harris County shall ensure its contractors follow wage requirements found in 40 U.S. Code Chapter 31 subchapter IV when prevailing wages are required.<sup>118</sup>

### **III. CONTRACT ADMINISTRATION**

The Purchasing Office shall be responsible for the oversight and management of a purchase commitment, which includes the initial procurement, renewal, termination of an existing contract, changes in existing contracts, contractor oversight, and management of disputes. Harris County shall maintain a system for contract administration to ensure contractor conformance with the terms, conditions, and specifications in the contract and to ensure adequate and timely follow up of all purchases. As part of this system, the Purchasing Office shall work with end users to evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.<sup>119</sup> The Purchasing Office shall work with end users and Harris County Attorney's Office to notify vendors of any error or disputed amount on any invoice.<sup>120</sup>

#### **A. DISPUTES**

Harris County alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve Harris County of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

#### **B. CONTRACT TYPES**

Depending on the type of procurement used, Harris County will execute the necessary contract type. Any standard contract shall be modified to include requirements for the applicable federal grant. Harris County shall incorporate required provisions and standards into each procured contract or agreement. Per Harris County policy, only the Harris County Judge will have signature authority. Only individuals with signature authority may approve contracts or change orders, or sign contracts, addenda, change orders, and amendments.

**IMPORTANT NOTE: 2 C.F.R. 200 prohibits cost plus a percentage of cost (CPPC) or a percentage of construction cost.**<sup>121</sup> Therefore, Harris County contracts shall not use cost plus

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<sup>118</sup> 2 C.F.R. Appendix II to Part 200 (D).

<sup>119</sup> See, ex. Texas Government Code Section 2252.032.

<sup>120</sup> Texas Government Code Section 2251.042 (requires notice to a vendor not later than the 21st day after the date Harris County receives the invoice, and must include a detailed statement of the amount of the invoice which is disputed).

<sup>121</sup> 2 C.F.R. 200.324(d)

percentage of cost or percentage of construction cost contract methods, and its contracts shall not contain any cost plus percentage of cost or percentage of construction cost provisions.

This prohibition against cost plus percentage of cost or percentage of construction cost shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

### **1. Firm-Fixed Price**

Fixed-price (either “lump sum” or “unit price”) contracts are used when there will likely be effective competition based on a complete product description and clear plans and specifications. Firm-fixed price contracts are appropriate when there are not any significant technical or engineering unknowns, and is suitable for construction, acquiring commercial items, or acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when Harris County can establish fair and reasonable prices at the outset, such as when:

- There is adequate price competition;
- There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid certified cost or pricing data;
- Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- Performance uncertainties can be identified, and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

A fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

### **2. Cost Reimbursement**

A cost-reimbursement contract is appropriate when it is not feasible to award a fixed price contract. A cost reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of Commissioners Court. Harris County shall use cost-reimbursement contracts only when:

- Circumstances do not allow Harris County to define its requirements sufficiently to allow for a fixed-price type contract; or
- Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. Cost-reimbursement contracts will be used when uncertainties involved in contract performance do not

permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

### **3. Time & Materials**

Harris County may use time and material type contracts only after a determination that no other contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk.<sup>122</sup> Therefore, Harris County shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.<sup>123</sup>

### **4. Change Orders / Contract Modifications**

Modifications to contracts may be made, via formal amendment to the contract, due to changes in conditions, scope, duration, cost, or any of the terms of the contract. For this amendment to be valid, it must be in writing, signed, and attested by both Harris County and the contracting party and attached to all original contract documents. Harris County shall require review by its attorney prior to implementing the process.

If it becomes necessary to make changes in plans, specifications, or proposals after a contract is made or if it becomes necessary to increase or decrease the quantity of items purchased, the Commissioners Court may make the changes.<sup>124</sup> However, the total contract price may not be increased unless the cost of the change can be paid from available funds. If a change order involves an increase or decrease in cost of \$50,000 or less, the Commissioners court may grant general authority to an employee to approve the change orders.<sup>125</sup> The original contract price may not be increased by more than 25 percent unless the change order is necessary to comply with a federal or state statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made.<sup>126</sup> Additionally, the original contract price may not be decreased by 18 percent or more without the consent of the contractor.

## **C. CONTRACTOR OVERSIGHT**

Harris County shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.<sup>127</sup>

## **D. RECORD RETENTION**

Although 2 C.F.R. 200.334 requires the retention of all records and documentation pertinent to the federally-funded expenditure for a minimum of three (3) years from the date of execution of the closeout agreement for a grant, Harris County shall abide by the Harris County Local Government Records Control Schedule, which is currently the most restrictive of local, federal and state regulations, and requires the retention of records for a minimum of five (5) years. If a local, federal,

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<sup>122</sup> 2 C.F.R. 200.318(j)(1)

<sup>123</sup> 2 C.F.R. 200.318(j)(2)

<sup>124</sup> Texas Local Government Code Section 262.031

<sup>125</sup> Texas Local Government Code Section 262.031

<sup>126</sup> Texas Local Government Code Section 262.031(b)

<sup>127</sup> 2 C.F.R. 200.318(b)

or state statute or regulation specifies a longer retention period for any records series received, created, or maintained by an agency, the statute or regulation overrides this schedule. Harris County shall also ensure compliance, to the extent feasible, with Texas Government Code Section 441.151 et seq.

## **E. CONTRACTOR REQUIREMENTS & RESPONSIBILITIES**

As a County with a population of 3.3 million or more, the Commissioners Court has authorization under Texas Local Government Code Section 271.025 to require that a minimum of 25 percent of the work be performed by the prime contractor and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds. Additional contractor requirements are found below:

### **1. Minimum Insurance Requirements**

When entering into a building or construction contract, Harris County shall comply with 28 Texas Administrative Code Section 110.110(c)(7) and the minimum insurance requirements of the State of Texas. Harris County shall require that contractors provide and maintain minimum insurance coverage requirements which may include, but are not limited to, the following:

- Workers Compensation, as required by the laws of Texas, and Employers' Liability, as well as all States, USL&H and other endorsements if applicable to the project, and in accordance with state law.
- Commercial General Liability. Coverage shall not contain any restrictive endorsements nor exclude or limit Products/Completed Operations, Contractual Liability, or Cross Liability. Where exposure exists, Harris County may require coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution, or other coverage. Harris County shall be named Additional Insured on primary/non-contributory basis.
- Automobile Liability, including coverage for all owned, hired, and non-owned vehicles used in connection with the Contract. Harris County shall be named Additional Insured on primary/non-contributory basis.
- Umbrella/Excess Liability (Harris County shall be named Additional Insured on primary/non-contributory basis)
- Professional/Errors & Omissions Liability (if applicable)

Harris County reserves the right to require additional insurance if necessary. Coverage shall be issued by companies licensed (by TDI) to do business in Texas, unless said coverage is not available or economically feasible except through an excess or surplus lines company, in which case the company should be registered to do business in Texas. Companies shall have an A.M. Best rating of at least A-VII. Harris County shall require that contractors furnish evidence of such insurance to Harris County in the form of unaltered insurance certificates. If any part of

the contract is sublet, insurance shall be provided by or on behalf of any subcontractor, and shall be sufficient to cover their portion of the contract.

Exact minimum coverage and insurance requirements will be included by Harris County within the solicitation document.

## **2. Workers' Compensation Requirements**

When entering into a building or construction contract, Harris County shall comply with 28 Texas Administrative Code Section 110.110(c)(7). Harris County shall include in its solicitations and contracts the specific language and provisions which require the contractor to certify, in writing, that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. Contractors shall be required to represent to Harris County that all employees of the contractor, who will provide services on the project, will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division.

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

## **3. Vendor Registration**

Vendor must be registered with the Texas Secretary of State to transact business in Texas, and must be current on all state and local fees and taxes, including but not limited to Franchise Account Status with the Texas Comptroller of Public Accounts in good standing, delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office, and for procurement purposes, a court judgment is not required for delinquent taxes to be considered a debt.

## **4. Vendors Owing Taxes or Other Debts**

Pursuant to Texas Local Government Code Section 262.0276, Harris County may refuse to enter into a contract with a person indebted to Harris County.<sup>128</sup> The policy requires vendor's taxes be current as of the date bids/proposals are due. Vendors with delinquent taxes on the due date will not be eligible for award. If, during the performance of this contract, a contractor's taxes become delinquent or contractor becomes otherwise indebted to Harris County, Harris County reserves the right to provide notice to the Auditor or Treasurer pursuant to Texas Local Government Code Chapter 154.045.

Whether or not a vendor's taxes are delinquent will be determined by an independent review of the Tax Office records. Vendors are encouraged to visit the Tax Office website

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<sup>128</sup> Initial rules adopted by Harris County pursuant to Texas Local Government Code Section 262.0276 effective May 1, 2004.

at [www.hctax.net](http://www.hctax.net), set up a portfolio of their accounts and make their own initial determination of the status of their tax accounts. Vendors who believe a delinquency is reflected in error must contact the Tax Office to correct any errors or discrepancies prior to submitting their bid in order to ensure that their bid will be considered. At its discretion, Commissioners Court may grant a waiver of technicality when it is in the best interest of Harris County to do so.

#### **IV. MANDATORY CONTRACT CLAUSES & PROVISIONS**

Federally-funded work requires that specific contract documents and language must be made a standard part of every solicitation and/or contract involving federal dollars. Contracts awarded by Harris County using federal grant funds shall contain the applicable provisions and clauses required by Federal statutes, executive orders, and implementing regulations, including those described in Appendix II to Part 200.<sup>129</sup> Any document that is signed by Harris County and has legal implications and consequences shall be carefully reviewed by the Harris County Attorney's Office with respect to its completion.

When necessary, the Purchasing Office shall assist Harris County Attorney's Office in the preparation of contracts. Contracts shall include the provisions required for federally-funded contracts, including performance requirements and period of performance or date of completion. All contracts shall adhere to cost principles outlined in 2 C.F.R. Subpart E – Cost Principles.

In addition to other provisions required by the applicable Federal agency or awarding entity, all contracts awarded by Harris County using federal funding shall contain provisions covering the following, as applicable.

##### **A. REMEDIES**

Contracts awarded by Harris County for more than the Simplified Acquisition Threshold, which for Harris County is set at \$50,000, shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.<sup>130</sup>

##### **B. TERMINATION FOR CAUSE & CONVENIENCE**

All contracts awarded by Harris County in excess of \$10,000 shall address termination for cause and convenience, including the manner by which it will be effected and the basis for settlement.<sup>131</sup>

##### **C. CIVIL RIGHTS REQUIREMENTS**

Harris County shall comply with the various civil rights requirements when carrying out activities under a federal award, including but not limited to those requirements pursuant to Title VI of the Civil Rights Act of 1964<sup>132</sup>. These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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<sup>129</sup> 2 C.F.R. 200.327

<sup>130</sup> 2 C.F.R. Appendix II to Part 200 (A)

<sup>131</sup> 2 C.F.R. Appendix II to Part 200 (B)

<sup>132</sup> Pub. L. 88-352, 78 Stat. 241

### **1. Nondiscrimination on the Basis of Race, Color, and National Origin**

Harris County shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

### **2. Nondiscrimination on the Basis of Sex**

Harris County shall comply with Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. 1681 et seq.), which prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

### **3. Nondiscrimination on the Basis of Disability**

Harris County shall comply with The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. 12101-12213), which prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Contractors must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **4. Nondiscrimination on the Basis of Handicap**

Harris County shall comply with Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. 794), which provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.

### **5. Nondiscrimination on the Basis of Age**

Harris County shall comply with The Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. 6101 et seq.), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance), which prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance.

### **6. Nondiscrimination on the Basis of Limited English Proficiency**

Harris County shall comply with Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin, which requires that recipients and subrecipients of federal assistance take reasonable steps to provide meaningful access to persons with limited English proficiency. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (Aug. 11, 2000), requires Federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations.

Consistent with the preceding nondiscrimination requirements, Harris County’s contractors must comply with the following requirements.

- A contractor of Harris County must not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability.
- A contractor of Harris County carrying a program or activity under a federal grant award must not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination.
- Contractors must adhere to any Federal implementing regulations and other requirements with respect to nondiscrimination.

#### **D. EQUAL EMPLOYMENT OPPORTUNITY**

Harris County shall, in accordance with Title VII of the Civil Rights Act of 1968, comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor), which implement Executive Order No. 11246, *Equal Employment Opportunity*, as amended by Executive Order No. 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*.

Harris County shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, gender identity, disability,<sup>133</sup> veteran status,<sup>134</sup> or age. 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.

A contractor must refrain from discrimination against present and prospective employees for reason of age in accordance with section 4 of the Age Discrimination in Employment Act of 1967 (codified as amended at 29 U.S.C. 623). Additionally, a contractor must, in accordance with Section 102 of the Americans with Disabilities Act of 1990 (codified as amended at 42 U.S.C. 12112) and the requirements of the U.S. Equal Employment Opportunity Commission at 29 C.F.R. Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act) pertaining to employment of persons with disabilities.

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. Part 60–1.3 shall 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 FR 12319, 12935, 3 C.F.R. Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to

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<sup>133</sup> 48 C.F.R. 52.222-36 and 41 C.F.R. 60-741.5(a)

<sup>134</sup> 41 C.F.R. 60.300

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.”<sup>135</sup>

Harris County shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

- (i) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by County setting forth the provisions of this nondiscrimination clause.
- (ii) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- (iii) 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 Contractor's legal duty to furnish information.
- (iv) 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 by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) 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.

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<sup>135</sup> 2 C.F.R. Appendix II to Part 200 (C)

- (vi) Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of Contractor's noncompliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, the contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No.11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No.11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) Contractor will include the provisions of paragraphs (i) through (viii) 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 No. 11246 of September 24,1965, so that such provisions will be binding upon each subconsultant or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Harris County 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. However, as a local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of Harris County which does not participate in work on or under the contract.

Harris County 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.

Harris County 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, Harris County 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 Harris County 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.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### **E. DAVIS-BACON AND RELATED ACTS**

Harris County shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3148 and 40 U.S.C. 276a to a-7). When required by Federal program legislation, construction contracts in excess of \$2,000 awarded by Harris County shall require compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 C.F.R. part 3). 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.

Harris County shall 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. Harris County shall report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c and 40 U.S.C. 3145), as supplemented by Department of Labor regulations (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 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. Harris County shall report all suspected or reported violations to the Federal awarding agency.<sup>136</sup>

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$2,000.

#### **F. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Harris County shall comply with the Contract Work Hours and Safety Standards Act, pursuant to 40 U.S. Code 3701–3708 and 40 U.S. Code 327-333. Where applicable, all contracts awarded by the Harris County in excess of \$100,000 that involve the employment of mechanics or laborers

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<sup>136</sup> 2 C.F.R. Appendix II to Part 200 (D)

must include a provision for compliance with 40 U.S. Code 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S. Code 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S. Code 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.<sup>137</sup>

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$100,000.

#### **G. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

Patents, copyrights, and rights in data requirements arise within the context of federally assisted projects, the purpose of which is to finance the development of a product or information. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. 401.2 (a) and Harris County 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,” Harris County shall comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.<sup>138</sup>

#### **H. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**

Harris County shall comply with the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Where applicable, all contracts awarded by the Harris County in excess of \$150,000 shall contain a provision for compliance 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). The Federal Water Pollution Control Act (“Clean Water Act”) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).<sup>139</sup>

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<sup>137</sup> 2 C.F.R. Appendix II to Part 200 (E)

<sup>138</sup> 2 C.F.R. Appendix II to Part 200 (F)

<sup>139</sup> 2 C.F.R. Appendix II to Part 200 (G)<sup>140</sup> 2 C.F.R. Appendix II to Part 200 (H)

The Clean Air Act and the Federal Water Pollution Control Act requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$150,000.

### **I. DEBARMENT AND SUSPENSION**

Harris County shall comply with Executive Orders 12549 and 12689, which prohibit awards, subawards, and contracts with parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>140</sup>

Harris County shall not award, contract with, or use debarred, suspended or ineligible contractors or subrecipients. Harris County shall ensure, prior to award, that all subrecipients or contractors receiving federal funds have met all the eligibility requirements outlined in state and Federal law. Harris County shall notify subrecipients and contractors that it is their sole responsibility to verify contractor and subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **J. BYRD ANTI-LOBBYING AMENDMENT**

Harris County shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. Code 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.<sup>141</sup>

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **K. PROCUREMENT OF RECOVERED MATERIALS**

Harris County shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, by procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

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<sup>140</sup> 2 C.F.R. Appendix II to Part 200 (H)

<sup>141</sup> 2 C.F.R. Appendix II to Part 200 (I)

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>142</sup>

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$10,000.

#### **L. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Harris County is prohibited from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).<sup>143</sup>

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### **M. DOMESTIC PREFERENCE FOR PROCUREMENTS**

As appropriate and to the extent consistent with law, Harris County should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.<sup>144</sup>

#### **N. WHISTLEBLOWER PROTECTION ACT**

Harris County shall comply with the Whistleblower Protection Act pursuant to 41 U.S. Code 4712 and 10 U.S. Code 2409, which requires that an employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to

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<sup>142</sup> 2 C.F.R. Appendix II to Part 200 (J) and 2 C.F.R. 200.323

<sup>143</sup> 2 C.F.R. Appendix II to Part 200 (K) and 2 C.F.R. 200.216

<sup>144</sup> 2 C.F.R. Appendix II to Part 200 (L) and 2 C.F.R. 200.322

public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

Harris County shall require that contractors inform employees and subcontractors in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S. Code 4712, as described in section 3.908 of the Federal Acquisition Regulation.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### **O. COPYRIGHTS AND RIGHTS IN DATA**

Harris County shall comply with the requirements pursuant to 2 C.F.R. 200.315 with regard to intangible property. Harris County is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at [37 C.F.R. part 401](#), “Rights to Inventions Made by [Nonprofit Organizations](#) and Small Business Firms Under Government Awards, [Contracts](#) and Cooperative Agreements.”

If a Federal award meets the definition of “funding agreement” under [37 C.F.R. 401.2](#) (a) and Harris County 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,” Harris County shall comply with the requirements of [37 C.F.R. Part 401](#), and any implementing regulations issued by the awarding agency.

If an agreement results in any copyrightable material, Harris County shall reserve the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes. Recipients shall have no obligation to the federal government with respect to program income earned from license fees and royalties for copyrighted materials, patents, patent applications, trademarks, and inventions produced under this award. However, Patent and Trademark Amendments (35 U.S. Code 18) apply to inventions made under an experimental, developmental, or research award.

#### **V. OTHER GRANT-SPECIFIC REQUIREMENTS**

When funds are obtained from federal sources, Harris County shall use the procurement standards applicable to those funds, provided such standards are consistent with the minimum requirements of this policy. Harris County administers federal grant funds received from the Federal Emergency Management Agency (FEMA), the U.S. Department of Housing and Urban Development (HUD), and the Texas General Land Office (GLO), among others. Grants are administered via a written contract between Harris County and the granting authority. Texas Government Code Section 2261.002 includes grants in its definition of a contract for which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

All purchases made with grant monies shall comply with the terms and conditions of the grant, the procurement standards applicable to the grant and specified in the grant agreement, and Harris County’s procedures regarding all purchases. Additional grant requirements specific to the funding source are listed below and shall be applied as applicable.

## **A. HOUSING AND URBAN DEVELOPMENT (HUD) FUNDING**

As applicable, Harris County shall comply with additional requirements as provided under Department of Housing and Urban Development (HUD) grant requirements, including but not limited to CDBG, CDBG-DR, and HOME.

### **1. CDBG and CDBG-DR National Objective Requirements**

CDBG and CDBG-DR grants require that recipients review the needs that have been identified in the Action Plan, as well as the services/goods to be procured, to ensure the proposed expenditure responds to the needs. Harris County is responsible for ensuring the expenditures of CDBG and CDBG-DR funds satisfy one of the three National Objectives. Harris County shall comply with 24 C.F.R. 570.208 by ensuring all activities funded by CDBG or CDBG-DR meet a National Objective. Harris County shall make clear the connection between disaster relief, recovery and related investments in housing, infrastructure and those made to businesses in support of the local economy.

Harris County is a direct recipient of CDBG funding through HUD's Entitlement Program. Additionally, the Texas General Land Office (GLO) has designated Harris County as a subrecipient under the State CDBG-DR Program for recent Presidentially-declared disasters. As a subrecipient under the GLO, Harris County is required by the GLO to submit its own local Action Plan, which requires Harris County to identify needs and demonstrate the connection to unmet needs.

### **2. Disaster Website**

Pursuant to Federal Register Notice / Vol. 83, No. 28 / Friday, February 9, 2018 / Notices, HUD requires that grantees maintain a public website that provides information accounting for how all grant funds are used and managed/administered. To meet this requirement, Harris County shall make the following items available on its website:

- The action plan (including all amendments);
- The current approved DRGR action plan;
- Each QPR (as created using the DRGR system);
- Citizen participation requirements;
- Procurement policies and procedures;
- Description of services or goods currently being procured by the grantee;
- A copy of contracts the grantee has procured directly; and
- A summary of all procured contracts, including those procured by the grantee, recipients, or subrecipients (e.g., a summary list of procurements, the phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract, etc.).

Harris County shall post only contracts as defined in 2 C.F.R. 200.1.

### **3. Public Access to Program Records**

Notwithstanding 2 C.F.R. 200.338, recipients shall provide citizens with reasonable access to records regarding the past use of CDBG and CDBG-DR funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.<sup>145</sup>

### **4. Accessibility**

When applicable, Harris County shall comply with all accessibility requirements pursuant to 24 C.F.R. 570.487(e) and 24 C.F.R. 570.614. Harris County shall ensure that all services, programs, and/or construction, including design and alteration, shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 and Appendix A to 41 C.F.R. Part 101-19, subpart 101-19.6), the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225), the Texas Architectural Barriers Act (TABAA), the Architectural Barriers (AB) Rules, and the Texas Accessibility Standards (TAS).

The above accessibility requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **5. Section 3 of the Housing and Urban Development (HUD) Act of 1968**

When applicable, Harris County shall comply with Section 3 of the Housing and Urban Development (HUD) Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 C.F.R. 75.<sup>146</sup> Section 3 of the HUD Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons. The policy of Harris County with respect to Section 3 is expressed in the Harris County Section 3 Policy which by this reference is incorporated herein.

The procedures to implement the Harris County Section 3 Policy are included in the Harris County Section 3 Manual. The procedures may be amended periodically by Harris County to ensure that the policy requirements are being met or to bring about efficiencies in the implementation of the program based on the practice and experience of running the program.

### **6. Section 109 of the Act**

When applicable, Harris County shall comply with Section 109 of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.), which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination

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<sup>145</sup> 24 C.F.R. 570.508

<sup>146</sup> 24 C.F.R. 570.487(d), 24 C.F.R. 570.607(b)

under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 C.F.R. part 6.<sup>147</sup>

The above Section 109 requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **7. Equal Employment Opportunity; Equal Participation of Faith-Based Organizations in HUD Programs and Activities**

When applicable, Harris County shall comply with 24 C.F.R. 5.109 and Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 C.F.R. 1964-1965 Comp. p. 339; 3 C.F.R., 1966-1970 Comp., p. 684; 3 C.F.R., 1966-1970., p. 803; 3 C.F.R., 1978 Comp., p. 230; 3 C.F.R., 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations, as amended by Executive Order 13559), 67 FR 77141, 3 C.F.R., 2002 Comp., p. 258; and the implementing regulations at 41 C.F.R. chapter 60.

The requirements for Executive order 13279 apply to all HUD programs and activities, except as may be otherwise noted in the respective program regulations in title 24 of the Code of Federal Regulations (C.F.R.), or unless inconsistent with certain HUD program authorizing statutes. These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **8. Flood Disaster Protection Act of 1973**

When applicable, Harris County shall comply the Flood Disaster Protection Act of 1973,<sup>148</sup> and shall include a provision in its contracts that mandates compliance with the provisions in 24 C.F.R. 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106), as amended, and the regulations in 44 C.F.R. Parts 59-79, which require that property owners purchase flood insurance for buildings located within Special Flood Hazard Areas (SFHA), when Federal financial assistance is used to acquire, repair, improve, or construct a building.

### **9. Fair Labor Standards Act of 1938**

When applicable, Harris County shall comply with the Fair Labor Standards Act of 1938, and shall include a provision in its contracts that states that contractors must comply with the Fair Labor Standards Act of 1938,<sup>149</sup> as now or hereafter amended, which regulates wage, hour and other employment practices that govern the use of funds provided and the employment of personnel under this Agreement. The Fair Labor Standards Act (FLSA) establishes the basic

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<sup>147</sup> 24 C.F.R. 570.602

<sup>148</sup> 24 C.F.R. 570.605

<sup>149</sup> 29 U.S.C. Section 201 et seq.

minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. Harris County shall require that contractors pay its workers all monies earned by its workers including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act, 29 United States Code (U.S.C.) Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S. Code Section 2000, et al., as amended; or any provisions of the Texas Labor Code Ann., as amended. The Fair Labor Standards Act (FLSA) may apply even if the Davis-Bacon and Related Acts (DBRA) or Contract Work Hours and Safety Standards Act (CWHSSA) do not apply.

The Fair Labor Standards requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

#### **10. Lead-Based Paint**

When applicable, Harris County shall comply with Lead-Based Paint requirements, and shall include a provision in its contracts that states that contractors must comply with Lead-Based Paint requirements, which require that any construction or rehabilitation of structures containing residential units for work performed under HUD-funded projects shall be subject to HUD Lead-Based Paint Regulations at 24 C.F.R. 570.608, and 24 C.F.R. Part 35, Subpart B.<sup>150</sup> Such regulations require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Contractor must comply with the provisions found in 24 C.F.R. 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts, for any work which relates to residential structures.

The Lead-Based Paint requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

#### **11. Green Building Standards**

Harris County shall comply with local codes and national building codes for any work involving rehabilitation or construction, including design. When applicable, and to the extent feasible, Harris County shall comply with the Green Building Standard for Replacement and New Construction of Residential Housing, pursuant to Federal Register / Vol. 81, No. 117 / Friday, June 17, 2016 / Notices.

The Green Building Standards apply to all new construction of residential buildings and all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (i.e., demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements

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<sup>150</sup> 24 C.F.R. 570.487(c) and 570.608<sup>151</sup> 44 C.F.R. 18.110

such as flooring systems, columns, or load bearing interior or exterior walls. Green Building Standards require that all construction covered above meet an industry-recognized standard that has achieved certification under at least one of the following programs:

- ENERGY STAR (Certified Homes or Multifamily High-Rise);
- Enterprise Green Communities;
- LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
- ICC–700 National Green Building Standard,
- EPA Indoor AirPlus (ENERGY STAR a prerequisite); or
- Any other equivalent comprehensive green building program.

Harris County shall require that projects funded, in whole or in part, by HUD funding comply with Green Building Standards, and shall include a provision in its contracts that states that contractors must comply with Green Building Standards to the greatest extent feasible.

The Green Building Standards requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

## **12. Non-Collusion (The Sherman Antitrust Act of 1890)**

Harris County shall comply with the Sherman Antitrust Act of 1890, and shall include Contractor must comply with the requirements of The Sherman Act, which prohibit collusion. Collusion occurs when two persons or representatives of an entity or organization make an agreement to deceive or mislead another. Such agreements are usually secretive and involve fraud or gaining an unfair advantage over a third party, competitors, consumers, or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve promises of future benefits, price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

The Sherman Act prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Collusion, bid rigging, or other anticompetitive activity is considered a felony. Contractor is expected to report any suspected fraud, collusion, or impropriety from the inception of solicitation through the end of the contract term.

The Non-Collusion requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

## **B. FEMA FUNDING**

As applicable, Harris County sets forth additional requirements as provided under FEMA grant requirements. FEMA recommends the following:

### **1. Section 406 Mitigation Requirements**

When applicable, Harris County shall comply with Section 406 mitigation requirements, which require that proposed mitigation efforts are cost-effective, technically feasible, and in compliance with Environmental and Historic Preservation (“EHP”) laws, the National

Environmental Policy Act (“NEPA”) regulations, and Executive Orders (“EO”). In addition, FEMA requires that the mitigations do not negatively impact surrounding areas or create susceptibility to damage from another hazard.

FEMA considers mitigation measures to be cost-effective if any of the following criteria are met:

- The cost for the mitigation measure does not exceed 15 percent of the total eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies;
- The mitigation measure is specifically listed in Cost-Effective Hazard Mitigation Measures, AND the cost of the mitigation measure does not exceed 100 percent of the eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies; or
- Harris County can demonstrate, through an acceptable benefit-cost analysis (“BCA”) methodology, that the measure is cost-effective. FEMA’s BCA software provides appropriate BCA methodologies.

## **2. Compliance with Federal Law, Regulations, and Executive Orders**

When applicable, Harris County shall include a provision in its 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.

## **3. No Government Obligation to Third Parties**

When applicable, Harris County shall include a provision in its contracts that states that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to Harris County, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the contract.

## **4. Program Fraud and False or Fraudulent Statements or Related Acts**

When applicable, Harris County shall comply with 31 U.S. Code Chapter 38, Administrative Remedies for False Claims and Statements. Harris County shall include a provision in its contract that the contractor acknowledges that 31 U.S. Code Chapter 38 applies to its actions pertaining to the contract.

## **5. Access to Records**

When applicable, Harris County shall include a provision in its contracts that states that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff.

## 6. Changes

When applicable, 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.

## 7. Seals, Logos, and Flags.

When applicable, Harris County shall include a provision in its contracts 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.

## 8. Restrictions on Lobbying

In addition to the Byrd Anti-Lobbying Requirements under 31 U.S. Code 1352, no FEMA financial assistance may be expended by a recipient, subrecipient, contractor, or subcontractor to pay any person to influence, or attempt 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 any Federal action concerning the award or renewal. If a third-party contract will exceed \$100,000, before awarding the contract, Harris County must obtain a lobbying certification and, if applicable, a lobbying disclosure from a prospective third-party contractor.<sup>151</sup>

## C. CDBG-DR FUNDING ADMINISTERED BY TEXAS GENERAL LAND OFFICE (GLO)

As applicable, Harris County sets forth additional requirements as provided under CDBG-DR grant requirements when administered by the Texas General Land Office (GLO).

### 1. Building Standards

The Texas General Land Office (GLO) has published requirements that state that all rehabilitation, reconstruction, or new construction must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (1) ENERGY STAR (Certified Homes or Multifamily High-Rise), (2) Enterprise Green Communities, (3) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), or (4) ICC– 700 National Green Building Standard. The GLO’s required construction standards are located primarily in the Site and Development Restrictions section of the GLO CDBG-DR Housing Guidelines. These include:

- Lead based paint requirements;
- Green Building Standards;
- Elevation standards;
- Resiliency standards;
- Substantial improvement/damage requirements;

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<sup>151</sup> 44 C.F.R. 18.110

- Accessibility requirements; and
- Visitability standards.

The Texas General Land Office, and therefore Harris County, will require compliance with applicable Building standards to the maximum extent feasible.

## **2. Contract Provisions**

The Texas General Land Office (GLO) requires certain additional contract provisions in contracts executed by its CDBG-DR Subrecipients. As such, Harris County shall include the following contract provisions in any contracts funded by CDBG-DR when administered by the Texas General Land Office:

### **a. Verification Not to Boycott Israel**

As required by Texas Government Code Chapter 2270, Harris County shall not enter a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.<sup>152</sup>

### **b. Transactions with Terrorist Organizations Prohibited**

As required by Texas Government Code Chapter 2252, Harris County shall not enter into a governmental contract with a company that is identified on a list prepared and maintained Vendor represents and certifies that, at the time of execution of this Agreement neither Vendor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.<sup>153</sup>

### **c. Information Security**

#### **Definitions**

“Breach of Security” or “Breach” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information including data that is encrypted if the person accessing the data has the key required to decrypt the data.

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<sup>152</sup> Texas Government Code 2270.002

<sup>153</sup> Texas Government Code 2252.152

“Personal Identifying Information” or “PII” means information that alone, or in conjunction with other information, identifies an individual, as defined at Tex. Bus. & Com. Code § 521.002(1).

“Sensitive Personal Information” or “SPI” means the information categories listed at Tex. Bus. & Com. Code § 521.002(2).

### **Security and Privacy Compliance**

- a. Contractor shall keep all PII and SPI received or generated under the Contract and any documents related thereto strictly confidential.
- b. Contractor shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- c. Contractor shall implement administrative, physical, and technical safeguards to protect PII and SPI that are no less rigorous than accepted industry practices including, without limitation, the guidelines in the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework Version 1.1. All such safeguards shall comply with applicable data protection and privacy laws.
- d. Harris County shall legally bind any contractors and their subcontractors to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto. Contractor shall ensure that the requirements stated herein are imposed on Contractor’s subcontractor(s).
- e. Contractor will not share PII or SPI with any third parties, except as necessary for Contractor’s performance under the Contract.
- f. Contractor will ensure that initial privacy and security training, and annual training thereafter, is completed by its employees and contractors, including any subcontractor, that have access to PII or SPI or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise personally handle PII or SPI on behalf of Harris County. Contractor agrees to maintain and, upon request, provide documentation of training completion.
- g. Any PII or SPI maintained or stored by Contractor or any contractor, including any subcontractor, must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.

### **Data Ownership**

- a. The GLO shall retain full ownership of all data, including PII and SPI, provided to Contractor by Harris County or the GLO.
- b. Upon termination of the Contract, Contractor shall promptly return to Harris County and/or the GLO all Harris County-owned or GLO-owned data possessed by Contractor and its employees, agents, or contractors, including any subcontractor. Contractor shall retain no copies or back-up records of Harris

County-owned or GLO-owned data. If such return is infeasible, as mutually determined by Harris County and the GLO and Contractor, the obligations set forth in this Appendix, with respect to Harris County-owned or GLO-owned data, shall survive termination of the Contract and Contractor shall limit any further use and disclosure of GLO Data to the purposes that make the return of Harris County-owned or GLO-owned data infeasible. In lieu of the requirements in this Section 3.2, Harris County or the GLO may direct Contractor to destroy any Harris County-owned or GLO-owned data in Contractor's possession. Any such destruction shall be verified by Contractor and Harris County and/or the GLO.

#### **Data Mining**

- a. Contractor agrees not to use PII or SPI for unrelated purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by Harris County in the Contract or any document related thereto.
- b. Contractor agrees to take all reasonably feasible physical, technical, administrative, and procedural measures to ensure that no unauthorized use of PII or SPI occurs.

#### **Breach of Security**

- a. Contractor agrees to provide Harris County and/or the GLO with the name and contact information for a Contractor employee which shall serve as the primary data security contact.
- b. Upon discovery of a Breach of Security or suspected Breach of Security by the Contractor, Contractor agrees to notify Harris County as soon as possible upon discovery of the Breach of Security or suspected Breach of Security, but in no event shall notification occur later than 24 hours after discovery. Within 72 hours, Contractor agrees to provide, at minimum, a written preliminary report regarding the Breach or suspected Breach to Harris County with root cause analysis including a log detailing the data affected.
- c. The initial notification and preliminary report shall be submitted to the GLO Information Security Officer at [brandon.rogers@glo.texas.gov](mailto:brandon.rogers@glo.texas.gov).
- d. Contractor agrees to take all reasonable steps to immediately remedy a Breach of Security and prevent any further Breach of Security.
- e. If the Breach of Security includes SPI, including Social Security Numbers, payment card information, or health information, Contractor agrees to provide affected individuals complimentary access for one (1) year of credit monitoring services.

#### **Right to Audit**

- a. Upon the Harris County's request and to confirm Contractor's compliance with this Appendix, Contractor grants Harris County, or the GLO, permission to perform an assessment, audit, examination, investigation, or review of all controls in the Contractor's, or any of Contractor's contractors, including any subcontractors,

physical and/or technical environment in relation to PII or SPI. Contractor agrees to fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that stores, processes, or transports PII or SPI. In lieu of a Harris County or GLO-conducted assessment, audit, examination, investigation, or review, Contractor may supply, upon Harris County or GLO approval, the following reports: SSAE18, ISO/ICE 27001 Certification, FedRAMP Certification, and PCI Compliance Report. Contractor shall ensure that this clause concerning the Harris County and the GLO's authority to assess, audit, examine, investigate, or review is included in any subcontract it awards.

- b. At the GLO's request, Contractor agrees to promptly and accurately complete a written information security questionnaire provided by Harris County or the GLO regarding Contractor's business practices and information technology environment in relation to GLO Data.

#### **D. AMERICAN RESCUE PLAN ACT (“ARPA”) CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS (“SLFRF”)**

As applicable, for expenditures using funds provided under the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program, which is part of the American Rescue Plan Act (“ARPA”), Harris County shall comply with additional requirements as provided under the American Rescue Plan Act of 2021. The period of performance for SLFRF begins on May 11, 2021 and ends on December 31, 2026. As a recipient of these funds, and as set forth in the Treasury's implementing regulations, Harris County may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024.

Harris County shall reference additional information regarding the American Recue Plan's Coronavirus State and Local Fiscal Recovery Funds, which can be found in:

- [The U.S. Department of the Treasury's Final Rule](#)
- [The U.S. Department of the Treasury's Compliance and Reporting Guidance](#)
- [The U.S. Department of the Treasury's Compliance Supplement Addendum 1](#)

Among other requirements, the requirements applicable to Harris County include, but are not limited to, the following:<sup>154</sup>

##### **1. Procurement, Suspension & Debarment**

Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 C.F.R. 200.317 through 2 C.F.R. 200.327, as applicable. The Uniform Guidance establishes in 2 C.F.R. 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 C.F.R. 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item

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<sup>154</sup> Per the U.S. Department of the Treasury's Compliance and Reporting Guidance

is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.

Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 C.F.R. 200.317 through 2 C.F.R. 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties.

As with all Federal grants, prime recipients and subrecipients of Federal grants are required to follow applicable Federal, state, or local requirements in the administration of these funds. Additionally, recipients must adhere to the strictest of any applicable laws.

## **2. Procurement Considerations Relevant to Coronavirus State and Local Fiscal Recovery Funds**

Harris County shall ask the following questions prior to expending funds:

- Does the funding have a nexus to COVID-19?
- Is the funding reasonable and proportional to the negative economic impact? (Relative in the context of the proposed program concerning the COVID-19 pandemic).
- Does the funding implicate any duplication of benefits? If so, what steps are in place to ensure no duplication?
- What is the initial risk assessment determination relative to the proposed subrecipient implicated here?
- Does the funding comport with an eligible use category outlined by the Treasury?
- Did the recipient only use funds for costs incurred during the period beginning March 3, 2021, and ending December 31, 2024?
- Are all funds obligated by December 31, 2024, and used by December 31, 2026?
- If the procurement of the good or service was made under Governor Abbott's Disaster Declaration, please be sure to note this in the memo.

## **3. Uniform Guidance Requirements and Exceptions**

Additional information regarding requirements can be found in the Coronavirus State and Local Fiscal Recovery Funds assistance listing.

The following 2 C.F.R. 200 requirements apply to the SLFRF program:

- 2 C.F.R. 200 Subpart B, General provisions
- 2 C.F.R. 200 Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards
- 2 C.F.R. 200 Subpart D, Post Federal; Award Requirements
- 2 C.F.R. 200 Subpart E, Cost Principles
- 2 C.F.R. 200 Subpart F, Audit Requirements
- 2 C.F.R. Part 25, Universal Identifier and System for Award Management

- 2 C.F.R. Part 170, Reporting Subaward and Executive Compensation Information
- 2 C.F.R. Part 180, OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)

The following 2 C.F.R. 200 requirements do **not** apply to the SLFRF program:

- Under 2 C.F.R. Part 200, Subpart C, the following provisions do **not** apply to the SLFRF program:
  - 2 C.F.R. 200.204 (Notices of Funding Opportunities);
  - 2 C.F.R. 200.205 (Federal awarding agency review of merit of proposal);
  - 2 C.F.R. 200.210 (Pre-award costs); and
  - 2 C.F.R. 200.213 (Reporting a determination that a non-Federal entity is not qualified for a Federal award).
- Under 2 C.F.R. Part 200, Subpart D, the following provisions do **not** apply to the SLFRF program:
  - 2 C.F.R. 200.308 (revision of budget or program plan);
  - 2 C.F.R. 200.309 (modifications to period of performance);
  - 2 C.F.R. 200.305 (b)(8) and (9) (Federal Payment).

#### **4. Award Terms and Conditions**

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, and Treasury’s Final Rule. Harris County should ensure it remains in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

##### **a. SAM.gov Requirements**

All eligible recipients are required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.

##### **b. Recordkeeping Requirements**

Generally, Harris County must maintain records and financial documents for five (5) years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats. Your organization must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office (“GAO”), Treasury’s Office of Inspector General (“OIG”), and their authorized representative in order to conduct audits or other investigations.

### **c. Single Audit Requirements**

Recipients and subrecipients are subject to the single audit requirements under 2 C.F.R. 200 Subpart F, which requires that recipients or subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 C.F.R. Part 200 Subpart F regarding audit requirements.

### **d. Civil Rights Compliance**

Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 C.F.R. part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 C.F.R. part 42, provide for the collection of data and information from recipients (see 28 C.F.R. 42.406). Treasury may request that recipients submit data for post award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal Governments.

### **e. Other**

Specific Treasury Terms and Conditions that apply to SLFRF funds that are not found under 2 C.F.R. Part 200:

- Record retention for five (5) years after all funds have been expended or returned to Treasury, whichever is later
- Administrative Costs: Direct and Indirect
- Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20
- New Lobbying restriction 31 C.F.R. Part 21
- Seat belts Executive Order 13043, 62 FR 19217 (Apr. 18, 1997)
- Texting while driving Executive Order 13513, 74 FR 51225 (Oct. 6, 2009)

- Publications: Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [Recipient] by the U.S. Department of the Treasury.”
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.)
- Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance
- Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” Limited English proficiency (LEP) Limited English Proficiency (LEP Guidance 70 FR 6067)
- The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.)
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794)
- The Age Discrimination Act of 1975, as amended (42 basis U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance
- Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq)
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations
- Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance
- Protections for Whistleblowers (41 U.S.C. §4712)
- Generally applicable federal environmental laws and regulations

Additional details can be found in Financial Assistance Agreement Local Governments (between Harris County and Treasury).

## **VI. ATTACHMENTS**

Attachment A – Code of Conduct

Attachment B – Harris County Evaluation Committee Guidelines

Attachment C – Harris County Protest Policy & Procedures

Attachment D – Harris County Inventory Management Policy

# **Attachment A**



# Harris County Code of Conduct

December 2019

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# Harris County Code of Conduct

November 2019

## I. Policy Statement

Harris County is committed to lawful and ethical behavior in all of its activities and requires Harris County officials, employees, and affiliated parties who conduct business with or on behalf of Harris County to act in accordance with this Code of Conduct, the Harris County Personnel Policies & Procedures, and all applicable local, state, and federal laws and regulations.

### A. Objectives

The objectives of this Code of Conduct are to:

- Ensure ethical behavior related to **all** of Harris County's activities;
- Ensure compliance with Title 2, Part 200 of the U.S. Code of Federal Regulations – Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards;
- Ensure compliance with Title 24, Parts 84 and 85 (HUD) of the U.S. Code of Federal Regulations – Administrative Requirements for Grants and Cooperative Agreements;
- Ensure compliance with Title 41, § 4712 of the U.S. Code of Federal Regulations related to protections from reprisal for people who make disclosures of certain information;
- Prevent or detect and correct improper activities;
- Encourage Harris County officials, employees, and affiliated parties to report what they believe in good faith to be a violation of this Code of Conduct or any questionable accounting or auditing matters; and
- Ensure the receipt, documentation, retention of records, and resolution of allegations of misconduct; and
- Protect reporting parties from retaliatory action.

### B. Target Audience

This Code of Conduct applies to all Harris County officials, employees, and affiliated parties.

## II. Definitions

For purposes of this Code of Conduct, the terms used herein shall have the following meanings:

- A. “Affiliated Parties” means Harris County related entities, including, but not limited to, state and federal grant sub-recipients, any vendors or contractors, and all those who apply for or conduct business with or on behalf of Harris County. It also includes affiliated parties’ subcontractors at every tier.
- B. “Chief Assistant County Auditor” means the Chief Assistant County Auditor-Audit Division.
- C. “County Attorney” means the Harris County Attorney or his or her designee.
- D. “Fraud” means wrongful or criminal deception intended to result in financial or other personal gain.
- E. “Misconduct” means:
  - 1. any activity or failure to act constituting a violation of this Code of Conduct, local, state, or federal laws, Harris County Personnel Policies & Procedures; fraud or gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety, by Harris County officials, employees, and affiliated parties while working for or on behalf of Harris County;
  - 2. making an allegation or allegations of misconduct maliciously, recklessly, with gross negligence, or with the knowledge that the allegations are false; and,
  - 3. retaliating against anyone who makes a good faith report of misconduct.
- F. “Official” means an elected official, an appointed official, or a person appointed by Commissioners Court to serve as the head of a department created by Commissioners Court.
- G. “Procurement” means actions related to the selection, award, and administration of contracts for goods or services.
- H. “Reporting Party” means anyone who makes an allegation of fraud or misconduct involving Harris County officials, employees, or an affiliated party.
- I. “Reporting Service” means Harris County’s third-party reporting service provider.

### III. Conflicts of Interest

Harris County officials and employees shall avoid any activity that creates a real or apparent conflict of interest. Conflicts exist in any relationship where the County's best interests may be different from an official's or employee's best interests. Conflicts of interest would arise when an official, employee, or any members of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties identified herein, has a financial or other interest in or a tangible personal benefit from an affiliated party considered for a contract and the official or employee is participating in any way in the procurement.

#### *Federal and State Law Compliance*

No official, employee, or affiliated party shall participate in the selection, award, or administration of a contract or subcontract supported by grant funds if a real or apparent conflict of interest exists. The County and its affiliated parties shall comply with Chapter 171 of the Texas Local Government Code, *Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments* and 24 C.F.R. §200.318, *General Procurement Standards*.

### IV. Acceptance of Gifts

A. Harris County officials and employees who participate in the procurement process or exercise discretion over others must not solicit or accept gratuities, favors, or anything of monetary value from affiliated parties even if it is not in exchange for an exercise of the official's or employee's discretion **except**:

1. gifts valued at less than \$50 (*other than cash, gift cards, loans or negotiable instruments, which are ALWAYS prohibited*);
2. promotional or commemorative items of minimal value (e.g., baseball caps, coffee mugs, mouse pads);
3. unsolicited and perishable food items delivered infrequently and in small amounts (e.g., donuts, cookies, or sandwiches);
4. promotions and discounts offered to other groups (e.g., discounts on sporting events or cellular service);
5. meals, travel, and lodging as a guest of the affiliated party as long as a representative of the affiliated party is actually present; and
6. any other exceptions or exclusions in §§ 36.08 and 36.10 of the Texas Penal Code and opinions issued by the Texas Ethics Commission.

- B. Prior to accepting any offer of employment from an affiliated party, Harris County officials should disclose the offer and get written approval from Commissioners Court before accepting the offer. Prior to accepting any offer of employment from an affiliated party, a Harris County employee should disclose the offer to his or her Department Head and obtain written approval before accepting the offer.

## **V. Reporting and Investigation of Alleged Fraud or Misconduct**

*Responsibility to Report.* Anyone who believes in good faith that misconduct or fraud has occurred or is occurring should report the facts or circumstances giving rise to this belief as follows:

- A report of misconduct or fraud should be submitted to the Fraud, Waste, and Abuse Hotline Number: (866) 556-8181 or via the website at [www.harriscounty.ethicspoint.com](http://www.harriscounty.ethicspoint.com).
- A report of misconduct or fraud should be made to the reporting service as promptly as possible, but no later than thirty (30) days after the reporting party becomes aware of facts or circumstances that appear to violate this Code.

## **VI. Anonymity**

The reporting service shall not provide the identity of the reporting party when reporting allegations of misconduct or fraud to the Chief Assistant County Auditor or County Attorney, if requested not to do so.

Notwithstanding the foregoing, if the reporting party voluntarily discloses his or her identity to any Harris County official or employee during or after the filing of a report of misconduct, Harris County has no responsibility to limit further dissemination or disclosure of the reporting party's identity during the investigation.

## **VII. Whistleblower Notice and Protection**

- A. Harris County will not discharge, demote, or otherwise discriminate against an official or employees who makes a good faith report of a violation of this Code of Conduct.
- B. Harris County requires all affiliated parties to inform their employees in writing of the whistleblower rights and remedies under 41 U.S.C. § 4712, as described in § 3.908 of the Federal Acquisition Regulation. Such writing shall be in the predominant native language of the affiliated party's workforce. This notice requirement extends to all third-party contractors of affiliated parties and their contractors at every tier.

### **VIII. Conflict with Laws**

This Code of Conduct does not relieve Harris County officials, employees, or affiliated parties of any duty to comply with local, state, and federal laws, administrative procedures, or other applicable governmental regulations regarding the reporting of legal misconduct.

### **IX. Penalties for Violation**

Violation of this Code of Conduct may subject a Harris County employee to disciplinary action up to and including termination of employment. Officials who violate this Code of Conduct may be subjected to appropriate remedial action authorized under state law.

# **Attachment B**



# Harris County Evaluation Committee Guidelines

## Evaluation Committee Guidelines

Harris County must appoint a committee to evaluate proposals or statements of qualifications in accordance with the written evaluation criteria supplied in a solicitation document. The objective of the Evaluation Committee is to review and understand the statement of work and requirements of the contract opportunity; read, review, and evaluate technical proposals or statements of qualifications received; and make recommendations of award in accordance with the evaluation criteria. These Guidelines have been established to ensure Harris County Evaluation Committee members have been informed of all applicable policies and procedures with regards to the evaluation process.

## Evaluation Committee Composition

An Evaluation Committee should include a panel of a minimum of three (3) persons (or a larger group having an odd number of designated voting members). Evaluation Committee members may include the following:

- Representatives from the User Department(s) utilizing the goods or services. User Departments should develop a policy, in conjunction with the Purchasing Office, to ensure various representatives participate in Evaluation Committees based on their relevant knowledge and expertise as it relates to the specific procurement. Departments should work to minimize the same individuals serving on multiple Evaluation Committees.
- A representative from Harris County Purchasing Office as non-voting member.
- Representatives from the County Administrator Office, Universal Services – Technology, the County Attorney’s Office and/or the Budget Management Department, when applicable.
- Technical experts and/or consultants designated by the Evaluation Committee to assist with technical analysis or particular aspects of the proposals.
- Commissioners Court Official(s) and/or their staff should not participate as a voting member of the Evaluation Committee on federal funded procurements; they may serve as a non-voting member of the committee.
- Commissioner’s staff may participate in a local funded procurement as a committee member if the procurement is directly related to their respective Precinct; otherwise they shall serve as a non-voting member of the committee.
- Commissioners Court Official(s) Staff may participate as a non-voting committee member if the procurement is a County wide initiative.
- Non-Harris County employees or members of the public that are not in a contractual relationship with Harris County which is related to the procurement, may participate as non-voting members on the Evaluation Committee and shall not participate as voting members on the Evaluation Committee on any federal or local funded procurement.

## Evaluation Committee Tasks

The responsibility of the Evaluation Committee is to evaluate technical proposals or statements of qualifications based on the relative importance of factors as set forth in the solicitation document and to attend offeror presentations and participate in discussions or negotiations as applicable giving fair and equal treatment to all offerors. The Evaluation Committee shall not evaluate costs or cost proposals.

Evaluation Committee member tasks may include, but are not limited to, the following:

- Evaluation Committee members shall direct any inquiries from offerors to the Purchasing Office.
- Each Evaluation Committee member shall have their own copy of the solicitation.



# Harris County

## Evaluation Committee Guidelines

- Each Evaluation Committee member shall review and be familiar with the solicitation, statement of work, requirements, and evaluation criteria.
- The Evaluation Committee shall elect a member as Chairperson. The Chairperson of the Committee may solicit project requirements and other information from the members of the Committee and other interested parties prior to specifications being prepared.
- Prior to beginning evaluations, the Evaluation Committee shall agree on the Scoring Methodology to be used when evaluating proposals or statements of qualifications. All members must use the same Scoring Methodology.
- Each Evaluation Committee member shall have their own copy of each technical proposal or statement of qualifications from each offeror.
- Each Evaluation Committee member shall thoroughly review each technical proposal or statement of qualifications and provide detailed information regarding technical strengths and weaknesses (both favorable and unfavorable) of each technical proposal or statement of qualifications.
  - RFPs only: The Purchasing Office shall be responsible for evaluating cost proposals and conducting Cost Scoring. Evaluation Members may be asked to review Cost Scoring results but shall not participate in evaluation or scoring of cost proposals.
- Each Evaluation Committee member shall independently evaluate and score the proposals or statements of qualifications using only the evaluation factors that were published in the solicitation.
  - Technical evaluations shall be in accordance with the published evaluation criteria
  - There cannot be any deviations from the published evaluation factors.
  - Each Evaluation Committee member shall provide scoring in accordance with the agreed-upon Scoring Methodology.
- Evaluation Committee members shall take explicit notes, documenting strengths and weaknesses and ensuring that the evaluation documentation supports the assigned score and acceptability determination.
- Evaluation Committee members shall not compare or evaluate proposals or statements of qualifications against each other. Each proposal or statement of qualifications must be evaluated on its own merits against only the factors requested in the solicitation. Scoring for each factor must be based on the information presented in the proposal or statement of qualifications.
- Evaluation Committee members shall not discuss the proposals or statements of qualifications, or their evaluations, with the other Evaluation Committee members until all of the initial evaluations and scorings have been completed.
- Following completion of the initial evaluations and scorings by each member, the Evaluation Committee shall convene for in-depth discussion of the findings. Each member shall bring written comments, evaluations, and scoring of each technical proposal or statement of qualifications and should be prepared to fully discuss the issues at such meetings.
  - Written comments and scoring may be adjusted as a result of and during the course of these meetings. NOTE: No undue influence shall be exerted on any member relative to his/her respective findings, evaluation, or assessment.



# Harris County

## Evaluation Committee Guidelines

- Evaluation Committee members must attend scheduled Evaluation Committee meetings. If for some reason this is not possible, the Purchasing Office or Evaluation Committee Chairperson should be notified as soon as possible of the anticipated absence.
- Evaluation Committee members shall be present at all Presentations with offerors.
- When applicable, the Evaluation Committee shall determine a competitive range or rank each offeror on the basis of his/her technical standing, in accordance with the applicable procedures and requirements.
- The Evaluation Committee shall prepare source selection determination, setting forth the rationale and basis for selection of the recommended offeror for award and submit to the Purchasing Office.
- Evaluation Committee members may be required to assist the Purchasing Office in the preparation of the content of Notice to Unsuccessful Offerors and in Debriefing sessions with unsuccessful offerors.
- Evaluation Committee members may be required to assist the Purchasing Office in negotiations or discussions with offerors.

### Evaluation Committee Rules

Each Committee Member will be required to sign the **Harris County Evaluation Committee Certification of Confidentiality and No Conflict of Interest**. Evaluation Committee Rules include, but are not limited to, the following:

- Each Evaluation Committee member must have no personal/financial interest involving the offeror which is recommended for award. All personal/financial interest situations must be reported to the Purchasing Office. In such cases, the Purchasing Office will make a determination whether an appointed Evaluation Committee member may serve on the Evaluation Committee. Any material transaction or relationship subsequently discovered must be immediately reported by the Evaluation Committee member to the Purchasing Office for appropriate action which may include removal of the Evaluation Committee member from the Committee and/or disqualification of the offeror in which the member has a personal or financial interest.
- The Evaluation Committee member must perform a fair evaluation of all responses and set aside prejudices. Inherent knowledge of an offeror must be used judiciously and pertain only to current situations.
- Offeror contact **MUST** be strictly through the Purchasing Office. If an offeror contacts a member of the Committee, the offeror must be referred to the Purchasing Office. Contact with offerors must only be conducted through the Purchasing Office, who shall share any feedback or responses from the offeror(s) on points of clarification with the Committee. No contact whatsoever shall be made with any of the offerors. Evaluation Committee members are expected to refer any offeror questions or requests for information regarding the solicitation, contact opportunity, or evaluation process to the responsible Buyer. Evaluation Committee members are required to report any offeror engaging in inappropriate conduct or those attempting to exert undue influence on the evaluation process to the responsible Buyer.
- Each Evaluation Committee member must be discrete in conduct during the evaluation process, especially in the presence of offerors.
  - Proposals and statements of qualifications may contain proprietary information and must therefore be secured at all times when not being evaluated/scored.
  - All proposal or statement of qualification information must be maintained in strict confidence and only released on a need-to-know basis for purposes of evaluation. No information shall be disclosed to anyone



# Harris County

## Evaluation Committee Guidelines

whose official duties do not require such knowledge concerning the identity and number of proposals or statements of qualifications received.

- The Purchasing Office will counsel individuals new to the contracting process when circumstances warrant such action.
- Committee members must not participate in individual meetings, lunch, entertainment or any other direct contact with offerors once appointed to the Evaluation Committee.
- Each Evaluation Committee must have a member from the Purchasing Office acting as Facilitator and sole point of contact. Committee members and a representative of the Purchasing Office must attend all meetings. If a Committee member is not able to attend, and the meeting is still held, that Committee member will be ineligible to score submittals but may remain as a Reviewer. If a meeting is held without a member of the Purchasing Office, the complete solicitation process may be canceled.
- Evaluation Committee members must all use the same Scoring Methodology to ensure the most objective approach to evaluations.
- If there are requirements outlined in the solicitation, any offeror response(s) that do not meet those requirements shall be reviewed by the Purchasing Office for determination of responsiveness. The Purchasing Office will provide an opinion as to the responsiveness and the Committee will make the determining decision as to accept or not accept those response(s).
- All members of the Committee must evaluate each proposal or statement of qualifications independently. No discussions can take place until all initial written reviews and evaluations have been completed.
- Evaluation Committee members must conduct themselves in a manner so that the results of the evaluation can be supported and defended.

### Evaluation Committee Documentation Requirements

Evaluations must be supported with narrative statements which describe each strength and weakness associated with each aspect of a technical proposal or statement of qualification in relation to the evaluation criteria. The identification of the specific strengths and weaknesses provides the County the information needed to make a reasonable and rational basis for the selection decision.

### Scoring Methodology

A Scoring Methodology is an internal process or document which helps Evaluation Committee members assess the merit of a technical proposal or statement of qualification with respect to the evaluation factors and significant subfactors. Unlike the evaluation criteria and associated weights, the Scoring Methodology is not something which needs to be provided to offerors. A Scoring Methodology is helpful in that it helps establish a more standardized approach to evaluation and scoring. This eliminates some of the personal bias and arbitrariness in scoring. Key in using a Scoring Methodology in evaluations is not the method or combination of methods used, but rather the consistency with which the selected method is applied to all competing technical proposals or statements of qualifications and the adequacy of the narrative used to support the rating. Federal agencies have historically defined a well-structured scoring methodology as having three components:

1. Evaluation factors as set forth in the solicitation and their relative weights;
2. A rating system; and
3. Standards or descriptions which define each rating or score and describe the basis for assigning one score over another.



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## Evaluation Committee Guidelines

Evaluation standards provide guides to help evaluators measure how well a technical proposal or statement of qualifications addresses each evaluation criterion identified in the solicitation but must not introduce unstated evaluation criterion. Standards permit the evaluation of technical proposal or statement of qualifications against a uniform objective baseline rather than against each other. Standards also promote consistency in the evaluation by ensuring that the evaluators evaluate each technical proposal or statement of qualifications against the same baseline. In developing standards for each evaluation criterion, the following should be considered:

- Define the standard by a narrative description that specifies a target performance level that the technical proposal or statement of qualifications must achieve in order to meet the standard for the factor or sub-factor consistent with the requirements of the solicitation.
- Describe guidelines for higher or lower ratings compared to the standard "target."
- Overly general standards should be avoided because they make consensus among evaluators more difficult to obtain and may obscure the differences between technical proposals or statement of qualifications.

A common scoring methodology is numerical, such as scoring a 1, 3, 5, 8, or 10 out of 10 maximum points, to denote the degree to which technical proposals or statements of qualifications meet the standards for the evaluation factors. Regardless of the methodology used, the County should establish a good working definition for a range of scores. The purpose of numerical scoring should reflect the County’s confidence in each offeror’s ability, as demonstrated in its proposal, to perform the requirements stated in the solicitation. An example of numerical scoring methodology, and the associated standards or description for each rating, is shown below:

Example

Numerical Score	Standards
10 “Excellent”	<p>Proposal demonstrates excellent understanding of requirements and approach that significantly exceeds performance or capability standards.</p> <p>Proposal contains major strengths, exceptional features, or innovations that will significantly benefit the County.</p> <p>There are no weaknesses or deficiencies.</p> <p>The risk of unsuccessful contract performance is extremely low.</p>
8 “Good”	<p>Proposal demonstrates good understanding of requirements and approach that exceeds performance or capability standards.</p> <p>Proposal has one or more major and/or minor strengths which indicate the proposed approach will benefit the County.</p> <p>Weaknesses, if any, are minor and are more than offset by strengths.</p> <p>Risk of unsuccessful performance is very low.</p>
5 “Satisfactory”	<p>Proposal demonstrates acceptable understanding of requirements and approach that meets performance or capability standards.</p> <p>There are few, if any, exceptional features to benefit the County.</p>



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## Evaluation Committee Guidelines

	<p>Few or no strengths, or weaknesses are generally offset by strengths.</p> <p>The risk of unsuccessful performance is low.</p>
<p>3</p> <p>“Marginal”</p>	<p>Proposal demonstrates shallow understanding of requirements and approach that only marginally meets performance or capability standards necessary for minimal but acceptable contract performance.</p> <p>Proposal has weaknesses that are not offset by strengths.</p> <p>The risk of unsuccessful contract performance is moderate.</p>
<p>1</p> <p>“Unsatisfactory”</p>	<p>Fails to meet performance or capability standards. Requirements can only be met with major changes to the proposal.</p> <p>Proposal indicates a lack of understanding of the goals, methods, resources, schedules, and other aspects essential to the performance of the contract.</p> <p>Numerous weaknesses and deficiencies exist.</p> <p>The risk of unsuccessful performance is high.</p>

NOTE: Cost (when included as an evaluation criterion) is evaluated and scored *separately* from technical factors and is not scored by the Evaluation Committee.

### Competitive Range

A Competitive Range is a range of qualified technical proposals received in response to a procurement for competitive proposals. Based on results from the evaluations, the Evaluation Committee would establish a Competitive Range comprised of all of the most highly rated proposals. The Competitive Range should include proposals which have a reasonable chance of being selected for award, in consideration of their technical capabilities and, if applicable, their proposed costs or prices.

Competitive Range determinations are significant documents in the contract file. The Purchasing Office should prepare a written Competitive Range determination based on all evaluation factors, including rationale for decisions to include or exclude specific proposals from the Competitive Range. This documentation is helpful to serve as a basis for debriefing offerors and for responding to inquiries and protests.

Written and/or oral Discussions may be conducted with all offerors determined to be within the Competitive Range. If the evaluations demonstrate that an offeror’s proposal is unacceptable and should not be included in the Competitive Range, the proposal should be eliminated from further consideration for award. Before conducting Negotiations or Discussions, proposals included in the Competitive Range would be classified as:

- “Acceptable.” This means that based upon the proposal as submitted, Harris County could contract with the offeror and expect that the work would be completed. The proposal is not perfect, but it contains no significant weaknesses.
- “Potentially acceptable.” This means that the technical part of the proposal contains weaknesses that keep it from being acceptable, but with relatively minor changes or additional information from the offeror, it might be made acceptable. Once additional information is obtained via initial negotiations, this type of proposal must become either acceptable or unacceptable. Borderline proposals need not automatically be excluded from the Competitive Range if there is a reasonable probability that they could be made acceptable. If there is doubt as to whether a proposal should be in the Competitive Range, the goal of achieving full and open competition is served by including it.



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## Evaluation Committee Guidelines

- “Unacceptable.” This means that the proposal is seriously flawed to the point that no amount of negotiation would lead to improve it, or the offer would have to be substantially rewritten to be found acceptable. Either the offeror simply did not understand the County’s requirement or did not elect to prepare a sufficient proposal. Technically unacceptable proposals should never be included in a Competitive Range.

After the initial round of Negotiations or Discussions, it may be necessary for the Competitive Range to be redetermined. For example, a potentially acceptable offer may become unacceptable after Negotiations or Discussions. In that case, the County should not ask the offeror for a Best and Final offer and should instead remove that proposal from the Competitive Range.

### Cost Scoring Methods – RFPs Only

Cost must be one of the evaluation factors in a Request for Proposals, therefore, each offeror is required to submit a cost proposal which must be evaluated and converted into a score. While the Evaluation Committee is responsible for evaluation of technical proposals, the Purchasing Office shall be responsible for completion of cost scoring. There are several different methods to evaluate and score pricing under a Request for Proposals process. Below are recommended methods for scoring cost proposals:

#### 1. Ratio Method

With this method, the proposal with the lowest cost receives the maximum points allowed. All other proposals receive a percentage of the points available based on their cost relationship to the lowest. This is determined by applying the following formula:

- Ratio Method Formula:  $\text{Lowest Cost} \div \text{Cost of Proposal Being Evaluated} \times \text{Maximum Points Available} = \text{Awarded points}$

Example: Vendor A’s total cost for the proposal is \$105,000. Vendor B’s cost is \$125,000, Vendor C’s cost is \$110,000, and Vendor D’s cost is \$140,000. Total points available for cost is 150 points.

- ➔ Vendor A (lowest cost):  $\$105,000 \div \$105,000 = 1.00 \times 150 = 150.00$  points (Maximum points)
- ➔ Vendor B:  $\$105,000 \div \$125,000 = 0.84 \times 150 = 126.00$  points
- ➔ Vendor C:  $\$105,000 \div \$110,000 = 0.95 \times 150 = 143.18$  points
- ➔ Vendor D:  $\$105,000 \div \$140,000 = 0.75 \times 150 = 112.50$  points

Vendor A receives 150 points for cost; Vendor B receives 126 points; Vendor C receives 143.18 points; Vendor D receives 112.50 points.

#### 2. Best Value (or “Tradeoff”) Method

When using this method, the following apply:

- All evaluation criteria that will affect contract award and their relative importance shall be clearly stated in the solicitation; and
- The solicitation shall state whether all evaluation criteria other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.
- This process permits “tradeoffs” among cost factors other than cost. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file.



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## Evaluation Committee Guidelines

In this method, all factors, except cost, are considered and scored first according to the established criteria. Once this is completed, the cost scoring is completed by dividing the total points awarded to each proposal by its proposed cost, resulting in a value represented in the form of a cost per point. This is determined by the following formula:

- Best Value Method Formula: Total Proposal Amount ÷ Total Points Awarded for Factors Other Than Cost = Cost Per Point

The proposal with the lowest cost per point represents the best value to the County and would receive the award. When using this method, Harris County should establish a minimum acceptable score each proposal would have to achieve in order to move forward in the process. Proposals that do not meet the minimum level would not advance to the final evaluation step.

Example:

- ➔ Proposal A’s score for Factors Other Than Cost is 64 points, and the total cost of their proposal is \$100,000.
- ➔ Proposal B’s score for Factors Other Than Cost is 87 points, and the total cost of their proposal is \$125,000.
- ➔ Proposal C’s Score for Factors Other Than Cost is 93 points, and the total cost of their proposal is \$150,000.

Category	Proposal A	<b>Proposal B</b>	Proposal C
Qualifications & Experience	40	<b>59</b>	70
Past Performance	24	<b>28</b>	23
Total Points	64	<b>87</b>	93
Cost	\$100,000	<b>\$125,000</b>	\$150,000
Cost Per Point	\$1562	<b>\$1436</b>	\$1612

Proposal B would receive the award because it provides the lowest cost per point (\$125,000 / 87 points = \$1436 per point), or best value to the County.

This method is appropriate when it may be in the best interest of the County to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

### 3. Reward Cost Method

In this methodology, the average cost is awarded the maximum allowable points and the other proposals receive fewer points depending on the formula selected by the Evaluation Committee. This is a method that might work best for service contracts where the cost normally is dependent upon the level of effort. If the cost is on the low side, one might suspect an inadequate level of effort. If the cost is on the high side, it might reflect unneeded “bells and whistles.” The average cost might provide an overall industry consensus of what it would take to do the job.

If the County chooses this method of scoring cost, it should carefully think through the decision of where to set the ranges for the point values. Since the ranges will determine where points are gained or lost, that decision may



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## Evaluation Committee Guidelines

eventually need to be explained and justified to vendors. An explanation of the method and the ranges assigned must be included in the evaluation criteria section of the RFP.

### Reward Cost Method Formula and Examples:

- Step A: Add all proposal amounts and determine average
  - Formula:  $(\text{Proposal A} + \text{Proposal B} + \text{Proposal C} + \text{Proposal D} + \text{Proposal E}) / \text{Number of Proposals} = \text{Average Proposal Amount}$
  - Example: 5 proposals are received. Proposal A's total cost is \$400,000, Proposal B's total cost is \$600,000, Proposal C's total cost is \$800,000, Proposal D's total cost is \$650,000, and Proposal E's total cost is \$750,000. Total points available for cost is 20 points.
    - $(\$400,000 + \$600,000 + \$800,000 + \$650,000 + \$750,000) / 5 = \$640,000$
- Step B: Determine the range for point values (Note that the range includes values both below and above the average)
  - Example:
    - Within 10% of Average Proposal Amount = 100% of Maximum Points Available, or 20 Points
    - Within 10 – 20% (+/-) of Average Proposal Amount = 75% of Maximum Points Available, or 15 Points
    - Within 20 – 30% (+/-) of Average Proposal Amount = 50% of Maximum Points Available, or 10 Points
    - Greater than 30% (+/-) of Average Proposal Amount = 0% of Maximum Points Available, or 0 Points
- Step C: Calculate ranges based on Average Proposal Amount
  - Example:
    - 10% range = \$576,000 to \$704,000
    - 20% range = \$512,000 to \$575,999 and \$704,001 to \$768,000
    - 30% range = \$448,000 to \$511,999 and \$768,001 to \$832,000
- Step D: Finally determine points based on calculated range values
  - ➔ Proposal 1 = \$400,000, greater than 30% below average: 0 points
  - ➔ Proposal 2 = \$600,000 within 10% range: 20 points
  - ➔ Proposal 3 = \$800,000 within 20% to 30%: 10 points
  - ➔ Proposal 4 = \$650,000 within 10% range: 20 points
  - ➔ Proposal 5 = \$750,000 within 10% to 20% range: 15 points



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## Evaluation Committee Guidelines

### Confidentiality

There must be no disclosure of any information during the course of the evaluation to anyone other than those participating in the evaluation and scoring proceedings. In accordance with Texas Local Government Code 262, Subchapter C, for contract opportunities issued as competitive proposals, all information contained in the responses must be kept CONFIDENTIAL until an award is approved by Commissioners Court.

Until that time, and due to the confidential nature of proposals or statements of qualifications, no discussion of proposals or statements of qualifications shall occur with anyone outside the Evaluation Committee members. Offeror documents may not be reproduced for any reason and must be returned to Purchasing after the evaluation is complete.

### Code of Ethics

Purchasing employees must adhere to the highest standards of honor and integrity with regard to all business and personal relationships in order that they may inspire the confidence of those served. Questionable practices, such as “bid shopping” or the extended free use of products under the guise of “demos,” should be avoided by all employees.

Credibility and public confidence are vital throughout the purchasing and contracting system. Purchasing employees must realize the importance and dignity of the service rendered by government and be aware of their own responsibilities as public servants. Every person employed by a public purchasing agency shall abide by a code of ethics. In accordance with State law and County purchasing requirements, County purchasing personnel, and other employees involved in the purchasing process, shall adhere to the following ethical standards; these employees *may not*:

- Participate in work on a contract by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family, has an actual or potential financial interest in the contract, including prospective employment;
- Solicit or accept money, credit, gifts, excessive entertainment, or other special considerations from an individual or business organization doing business with the County;
- Accept employment from a vendor or potential vendor while working for the County; or
- Knowingly disclose confidential information for personal gain.

The full Harris County Statement of Ethics can be found here:

<https://hrrm.harriscountytexas.gov/Documents/Ethics%20Policy.pdf>

### Conflicts of Interest

Harris County shall comply with the conflicts of interest policies in Texas Local Government Code, Chapter 171 and 176 and 2 C.F.R. 200.318(c)(1). Evaluation Committee members who have a conflict of interest or relationship, financial or otherwise, or that may be construed as a conflict of interest, must disclose the existence of the conflict and, if necessary, excuse themselves from the Committee. A conflict of interest may exist when a Committee member has had formal connection with one of the offerors, such as: outstanding or current offers of employment, significant ownership of stock, or partnership in any organization submitting a proposal or statement of qualifications. If an Evaluation Committee member is found to have an association or affiliation with any offeror submitting a proposal or statement of qualifications, that person must be removed from the Evaluation Committee.

Except for eligible administrative or personnel costs, the general rule is that no employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving federal funds, who exercise or have exercised any functions or responsibilities with respect



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## Evaluation Committee Guidelines

to federally-funded activities, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

No Harris County employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of a grantee or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Harris County or its subrecipients may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.

Federal procurement regulations require that local governments and subrecipients maintain written standards of conduct covering conflicts of interest. The general Conflict of Interest law for Texas city and county officials, as well as officials of other Texas political subdivisions, is found in Chapter 171 and 176 of the Texas Local Government Code. At a minimum, in accordance with the federal conflict of interest regulations, the below conflict of interest requirements shall be followed by Harris County:

1. No employee, officer, agent of Harris County shall participate in the selection, award or administration of a contract supported by federal funds or CDBG-DR funded activities if a conflict-of-interest, real or apparent, would be involved. Such a conflict would arise when:
  - a. The employee, officer or agent, any member of his or immediate family or 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 for award. The grantee or subrecipients officers, employees, or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements;
  - b. Employees, officials, and/or agents of Harris County shall not act as surety for a business entity that has work, business, or a contract with the governmental entity or act as surety on any official bond required of an officer of the governmental entity;
  - c. Employees, officers and agents of Harris County shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements; and
  - d. The federal regulations require that standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the grantee or subrecipient. As such, Harris County shall impose penalties, sanctions or other disciplinary actions to any employees, officers, or agents of the Harris County for violations of these standards.

### Potential Conflicts of Interest

Any employee, contract employee or appointed member who participates in the recommendation, requisitioning, bid solicitation, evaluation, or otherwise takes part in the purchasing decision-making process and who has a whole or partial ownership in, or derives some income or personal benefit from the recommended or selected vendor should disclose the relationship as a potential conflict of interest. For the purposes of this section, acts of reciprocity or exchange of favors from which an employee derives some income or personal benefit shall be considered conflicts of interest.

In the event an outside consultant or contractor submits a bid or proposal on a project, of which the consultant or contractor was a previous contributor, other than an open forum, then the bids or proposals from that consultant or contractor shall be disqualified on the basis of conflict of interest.



**Evaluation Committee Certification of Confidentiality and No Conflict of Interest**

I, the undersigned, a member of the Evaluation Committee for contract opportunity [INSERT SOLICITATION TITLE & NUMBER] will perform the evaluation in accordance with all requirements represented in Harris County policies and procedures and commit to conducting myself to the highest standard of ethics in accordance with the Harris County Code of Ethics and Conflict of Interest policies. In accepting this appointment, I acknowledge that I have read, understand, and shall comply with the Harris County Evaluation Committee Guidelines. I hereby affirm that I will perform evaluations in a fair and impartial manner, on the basis of the requirements and criteria listed in the solicitation, for the submissions of each offeror, without any conflict of interest, bias or prejudice.

Further, by signing this Certification, I represent the following:

- I shall conduct myself in a manner so that the results of the evaluation can be supported and defended.
- I neither have nor shall I during the evaluation acquire any financial interest, direct or indirect, in any offeror or otherwise that would conflict in any manner or degree with my evaluation responsibilities. By signing this form, I confirm that any conflict of interest or potential conflict of interest has been disclosed to the Purchasing Office.
- I shall not participate in the development of offeror proposals, statements of qualifications, or responses to this contract opportunity.
- I shall refer all offeror questions or requests for information to the responsible Buyer and shall report any offeror engaging in inappropriate conduct or those attempting to exert undue influence on the evaluation process to the responsible Buyer.
- I acknowledge that this evaluation may involve offeror information not publicly known. I agree not to disclose any confidential or proprietary information gained during the evaluation proceedings as an Evaluation Committee member without written consent of the offeror. I understand that if any information regarding the evaluation process or offeror proposals or statements of qualifications is compromised, it may be cause for rejection of all responses or cancellation of the solicitation.
- I understand that depending on the situation/project, Purchasing may allow procedures in addition to the Evaluation Committee Guidelines.

Should I become aware of any situation which might arise that could alter any of the representations above, or that might otherwise create the appearance of a conflict or other impropriety, I shall notify the Purchasing Office or Purchasing Agent immediately.

\_\_\_\_\_  
Signature of Evaluation Committee Member

\_\_\_\_\_  
User Department/Organization Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

# **ATTACHMENT C**



# Harris County

## Protest Policy & Procedures

### GENERAL STATEMENT

This document sets forth Harris County's Debriefing, Protest, and Appeals policies and procedures which are aimed to ensure a fair, open, and transparent procurement process. Harris County shall be responsible for evaluating and resolving disputes, protests, and appeals in response to Harris County's procurement actions.

### DEBRIEFING

A Debriefing is a formal meeting between Harris County and an offeror for a particular procurement to explain the rationale for the contract award decision, and normally occurs after the County has awarded a contract through an advertised competitive proposals solicitation such as a Request for Proposals (RFP), Request for Qualifications (RFQ) or Competitive Sealed Proposals (CSP). A Debriefing is a procedural matter that does not affect the validity of the award.

#### DEBRIEFING POLICY

When a contract is awarded on the basis of other than price alone, unsuccessful offerors, upon their written request, shall be Debriefed as soon as possible. Debriefings are not required when the County utilizes a sealed bidding procurement method such as an Invitation for Bids (IFB). Harris County shall provide a Debriefing to unsuccessful offerors upon properly submitted and timely written request. Debriefings shall be conducted in a fair and impartial manner, and information given to the offerors shall be factual and consistent with the evaluation.

#### DEBRIEFING PROCEDURES

##### Timing of Debriefing

Harris County must receive an unsuccessful offeror's written request for a Debriefing within three (3) days after the date on which the Purchasing Office sends notification(s) to unsuccessful offeror(s) or posts the recommendation for award notice to the Purchasing Office website to be considered timely.

To the maximum extent practicable, the County shall conduct the Debriefing within fifteen (15) days after receipt of the written request for Debriefing. Upon receiving a timely request for a Debriefing, the County should inform the offeror of the offered (scheduled) Debriefing date in writing by electronic means with immediate acknowledgment requested. If the offeror is unable to attend the offered Debriefing date and requests a later time, the offeror must acknowledge the offered Debriefing date, and formally (in writing) request a later date instead.

##### Content of Debriefings

The Debriefing information shall generally include Harris County's evaluation of the significant weaknesses or deficiencies in the offeror's proposal and a summary of the rationale for award. The Purchasing Office shall not engage in discussions about how the offeror's response compared to



# Harris County

## Protest Policy & Procedures

other responses and shall not divulge confidential information regarding a competitor's response, including pricing of competitors. The Debriefing shall not reveal any information that is not releasable under the Freedom of Information Act (FOIA); for example:

- Trade secrets
- Privileged or confidential manufacturing processes and techniques; and
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

### PROTESTS

“Protest” means a written objection by an Interested Party to any of the following:

- A solicitation by Harris County for offers for a contract for the procurement of property or services.
- The cancellation of a solicitation or other request.
- An award or proposed award of a contract.
- A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

“Interested Party” is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract

### PROTEST POLICY

Harris County's Purchasing Office shall fully consider and promptly judge Protests relating to the County's solicitation procedures, solicitation documents, or recommendations for award of a contract. Bidders or offerors shall be advised of these procedures in the solicitation documents. These procedures shall apply to all procurement and contract actions, including sole source awards and those resulting from formal competitive bidding and competitive proposals procedures.

### PROTEST PROCEDURES

Failure of a Protestor to follow the Protest Procedures may render the Protest untimely and/or inadequate and may result in rejection of the Protest.

#### Timing of Protest

To be considered timely, Protests concerning the content of a solicitation, including all attached documents, must be filed with the Purchasing Office within ten (10) calendar days after the Purchasing Office first advertises the solicitation and received not later than 5:00 p.m. CST on the tenth day. If the tenth calendar day falls on a weekend or legal holiday, the protest period ends at 5:00 p.m. CST the following business day. The Purchasing Office will acknowledge only one



# Harris County

## Protest Policy & Procedures

Protest on solicitation content. The Purchasing Office shall issue a written decision on the Protest prior to opening of bids or submission of proposals.

Protests concerning a recommendation for award, on any ground not based upon the content of a solicitation, must be filed with the Purchasing Office by an Interested Party within ten (10) calendar days after the Purchasing Office sends notification(s) to unsuccessful bidder(s) or offeror(s) or posts the recommendation for award notice to the Purchasing Office website. If the tenth calendar day falls on a weekend or legal holiday, the Protest period ends at 5:00 p.m. CST the following business day. Any additional protests must be filed within the designated time.

The date of filing must be the date of receipt by the Purchasing Office.

The procedures and time limits in this section are mandatory and are the sole and exclusive remedy of each Protestor if there is a Protest. A Protestor's failure to timely complete the Protest procedures is deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply with these procedures, constitutes a waiver of any right to further pursue the Protest, including legal proceedings.

### Content of Protest

In order for a Protest to be considered properly, the Protestor shall provide a written submission to the Purchasing Office, which shall contain at a minimum:

- Name and address of the Protestor;
- Its relationship to the procurement sufficient to establish that the Protest is being filed by an Interested Party;
- Written proof that Protest has been filed in a timely manner;
- The specific solicitation, job, or contract number;
- The specific staff recommendation, County action, or inaction that is being protested;
- The identification of the specific statutory or regulatory provisions and/or laws that the action complained of is alleged to have violated, and upon which the Protest is based;
- A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified;
- A precise statement of the relevant facts;
- All documentation supporting the allegations in the Protest;
- A statement of the specific relief requested (identification of the issue or issues to be resolved).



# Harris County

## Protest Policy & Procedures

If the Protest does not comply with any of the preceding requirements, it may not be considered for evaluation and may be returned to the Protestor who submitted the written documentation without the appropriate substantiating information. At the Protestor's discretion, a Protest may be filed by e-mail to the assigned Buyer (with original copy by mail) or by certified or registered mail, overnight courier, or hand delivered. The County is not responsible for lost or otherwise delayed deliveries. A Protest not filed within the time limits herein may be rejected without consideration or evaluation.

All mailed Protests must be filed in writing to:

Harris County Purchasing Agent  
Attn: Purchasing Agent  
1111 Fannin Street, 12<sup>th</sup> Floor  
Houston, Texas 77002

**No other location or addressee shall be acceptable.**

### Protest Determinations

At its discretion, the Purchasing Office may investigate the Protest, obtain additional information, and provide an opportunity to resolve the Protest by mutual agreement, or schedule one (1) or more meetings with the Protestor. The Purchasing Office shall respond to each issue raised in all timely and properly filed Protests. The Purchasing Office shall make a written determination of the Protest within thirty (30) business days from receipt of Protest. The Purchasing Office, in its review of the Protest, may determine that:

- No violation has occurred; or
- A violation has occurred, and it is necessary to take remedial action.

The Purchasing Office may elect to withhold from proceeding with a solicitation or with the award of a contract unless a determination is made that proceeding with a solicitation or award of a contract without delay is necessary to protect substantial interests of the County. Any decision rendered by the Purchasing Office may be appealed to the Harris County Commissioners Court.

If the Purchasing Office determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the Purchasing Office shall inform the Protestor and other Interested Parties of that determination in writing by e-mail or by U.S. postal service mail to the address stated in the Protest. The Purchasing Office shall set forth the reasons for the determination and may set forth any appropriate remedial action, which may include canceling or voiding the contract to the extent allowed by law.



# Harris County

## Protest Policy & Procedures

### APPEALS

An Appeal is a Protestor's written request for reconsideration of a Harris County Protest Determination.

#### APPEALS POLICY

If a Protestor disagrees with the Protest Determination made by the Purchasing Office, the Protestor has the right to Appeal. Any Protest Determination rendered by the Purchasing Office may be appealed to the Harris County Commissioners Court. It is the policy of Harris County to consider fully and judge promptly Appeals relating to the County's solicitation procedures, solicitation documents, or recommendations for award of a contract. These procedures shall apply to all procurement and contract actions, including sole source awards and those resulting from formal sealed bidding and competitive proposals procedures.

#### APPEALS PROCEDURES

Failure of a Protestor to follow the Appeals Procedures may render the Appeal untimely and/or inadequate and may result in rejection of the Appeal.

#### Timing of Appeals

An Appeal to the Commissioners Court concerning a Protest Determination must be filed by an Interested Party within five (5) business days following the date of issuance of the Protest Determination — not the date the Protestor receives the Protest Determination. Failure of the Protestor to appeal the Determination of the Purchasing Office within five (5) business days after the date of the Protest Determination renders the Protest Determination the final administrative action of the County on the Protest.

The Appeal must be submitted in writing. If sent by e-mail the Appeal must be submitted to the Purchasing Agent at [dewight.dopslauf@pur.hctx.net](mailto:dewight.dopslauf@pur.hctx.net). If submitted by certified or registered mail, overnight courier, or hand delivered, Appeals must be submitted to:

Harris County Office of the Purchasing Agent

Attn: Purchasing Agent

1111 Fannin Street, 12<sup>th</sup> Floor

Houston, Texas 77002

**No other location or addressee shall be acceptable.**

If the Purchasing Office receives an appeal after 5:00 p.m. CST, it shall consider the Appeal as received on the next business day. If the Purchasing Office receives an Appeal after the Appeal period ends, the Purchasing Office shall send a written response signed by the Purchasing Agent to the Protestor stating that the Appeal is denied because it was not received within the time limits. The Purchasing Office shall send this response as soon as reasonably practical.



# Harris County

## Protest Policy & Procedures

The procedures and time limits in this section are mandatory and are the sole and exclusive remedy of each Protestor if there is an Appeal. A Protestor's failure to timely complete the Appeal procedures is deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply with these procedures, constitutes a waiver of any right to further pursue the Protest, including legal proceedings.

### Content of Appeals

The Protestor bears the burden of proof to show that the Purchasing Office's written Protest Determination is incorrect. The Appeal must be based on one or both of the following:

1. The Protestor alleges that there are new facts and/or information related to the Protest that were not available at the time the Protest was submitted.
2. The Protestor alleges that the decision of the Purchasing Office was in error of law or regulation.

Appeals filed for any other reason will not be considered. A Protestor is prohibited from stating new reasons for a Protest in its Appeal.

### Commissioners Court Appearances

The Purchasing Agent shall submit timely and properly submitted Appeals to the Commissioners Court with a request that the Appeal be placed as an Agenda Item. If the Protestor wishes to appear at Commissioners Court, the Protestor must complete an Appearance Request Form at <https://appearancerequest.harriscountytexas.gov/>. Protestors may wish to appear in order to speak at Court and answer questions that may arise by Court members. However, an appearance at Commissioners Court is not required. Commissioners Court meetings are held at 1001 Preston, Suite 500, Houston, TX 77002.

The Clerk of the Court or another person designated by the presiding member of the Court shall keep the time for speakers. Those persons who do not conduct themselves in an orderly and appropriate manner will be ordered to leave the meeting and recognition to speak may be refused at subsequent meetings of the Court. Refusal to abide by the Court's order may result in a Contempt of Court Citation.

### Appeal Determinations

Once on the Item is on the Agenda, the Commissioners Court shall consider and take appropriate action on the Appeal. Action shall be within a reasonable time usually no later than the third Commissioners Court session held after the Purchasing Office receives the Appeal.

The Purchasing Office shall notify the Protestor of the date, time, and place that the Commissioners Court is to consider the Appeal. At that time, the Commissioners Court shall allow the Protestor an opportunity to present evidence in support of the Appeal. The Purchasing Agent may also make a presentation. In evaluating an Appeal, the Commissioners Court shall only review the written



# Harris County

## Protest Policy & Procedures

Appeal and documents submitted by the Protestor and the materials and conclusions reached by the Purchasing Office. The Commissioners Court shall then determine whether to uphold or overturn the Purchasing Office's decision on the Protest. The Commissioners Court may overturn the results of a solicitation process or for ethical violations by Purchasing Office staff, the County evaluation committee members, the subject matter experts or any other County staff managing or participating in the solicitation process, regardless of the timing or the content of the Protest. If it has been determined that a violation has occurred, and it is necessary to overturn the Purchasing Office's decision on a Protest, remedial action taken by the Commissioners Court may include:

- Declaring the contract void;
- Reversing the award; and/or
- Re-advertising the purchase using revised specifications.

The Purchasing Agent shall send the Commissioners Court written decision on the Appeal by e-mail or by U.S. postal service mail to the address stated in the Appeal.

The Commissioners Court determination of the Appeal will be the final administrative action of Harris County and shall exhaust all administrative remedies available to the Protestor. No further Appeal shall be permitted.

# **Attachment D**



# Harris County Inventory Policy Guidelines

The Purchasing Office includes the Purchasing Services Division, which is responsible for County inventory records, transfer, sale, and disposition of County surplus, salvage, and/or abandoned or unclaimed property [LGC §262.011 (i); LGC §263.151 *et seq.*, as amended; and Texas Code of Criminal Procedure §18.17, as amended]. Additionally, Purchasing Services oversees the County recycling program.

## 1. Harris County Property

The following definitions are provided to assist County departments and agencies in effectively fulfilling their responsibilities as required by law for the safeguarding of, and accounting for, all inventoried County assets.

- a. **Capital Assets** – County personal property with a unit value of \$5,000 or more. These items will be tagged by the Purchasing Agent with a white tag and maintained in the County financial system on the County Inventory Listing.

Items in this category include but are not limited to rolling equipment, generators, pumps and computer systems. Repair or replacement parts of a larger asset are not considered a capital asset. Items in this category must be received and paid by line item.

- b. **Non-Capital Assets** - County personal property with a unit value of less than \$5,000. *At the discretion of the elected official or department head, these items may be maintained in the County financial system and/or tagged by the user department with a blue tag.*

Items in this category include but are not limited to radios, laptops, small rolling equipment, power tools, furniture, etc.

- c. **Salvage Property** - Personal property that has no value for the purpose for which it was originally intended, but may have value for other use.
- d. **Waste Property** - Property that has no value, either as originally intended or otherwise. This property may be disposed of utilizing existing county contracts.
- e. **Missing items** - Property unable to be located but for which recovery is anticipated, usually within a year.

## 2. Inventory Control

The Purchasing Office records changes for all items on the County Inventory Listing. Changes to records must be requested by user departments with the appropriate County form. Each individual user department is responsible for all items assigned to its department, regardless of value.

When requested, Purchasing Services will assist any user department in conducting its inventory. Purchasing Services will randomly schedule periodic inventories and spot checks of user departments in order to verify the accuracy of the inventory records. As required by law, the County Auditor is responsible for verifying the inventory records maintained by the Purchasing Office [LGC §262.011 (i)].



# Harris County Inventory Policy Guidelines

## 2.1 Inventory Responsibilities by Department

### a. Purchasing Agent

LGC § 262.011 (i) requires that each year the County Purchasing Agent shall file with the County Auditor and each of the members of the board that appoints the County Purchasing Agent an inventory of all property on hand and belonging to the County and each subdivision, officer, and employee of the County."

Further, LGC § 262.011 (j) states the County Purchasing Agent shall transfer County supplies, materials and equipment from a subdivision, department, officer, or employee of the County that are not needed or used to another subdivision, department, officer, or employee requiring the supplies, materials and equipment."

### b. Auditor's Office

The County Auditor shall carefully examine the inventory and make an accounting for all property purchased or previously inventoried and not appearing in the inventory. Further, the Harris County Road Law, Section 10, requires the County Auditor to take inventory of property assigned to any County official whose employment is terminated due to death, resignation, or retirement.

### c. All Departments

Each department director or elected official has the primary responsibility for safeguarding and accounting for assets which have been assigned to their department. This responsibility includes conducting an annual departmental inventory and comparing the results to the County Inventory Listing. Any appropriate reconciling documentation should be submitted to Purchasing Services.

## 2.2 County Inventory Procedures

The following inventory control guidelines are designed to assist departments in conducting a successful inventory. In addition, Purchasing Services or the Auditor's Office is available to assist if requested.

### a. Inventory Detail Listing

An Inventory Detail Listing indicating the current departmental inventory of record is available in the County financial system to each department director and elected official for the applicable department. No later than May 1<sup>st</sup> of each year, every department and elected office is required to submit to Purchasing Services a completed Inventory Completion Statement (County Auditor's Form 3368). Thereafter, that department or office inventory is considered current and acceptable for filing with the County Auditor and each of the members of the board that appoints the county Purchasing Agent, as required by LGC §262.011 (i). Any department or office submitting



# Harris County Inventory Policy Guidelines

Inventory Completion Statement (County Auditor's Form 3368) later than May 1<sup>st</sup> will be considered delinquent, and included on a quarterly report submitted by Purchasing Services to the Purchasing Office and the County Auditor for communication to Commissioners Court, as necessary.

## **b. Determine Actual Inventory**

Organize and count all items within the department, which are considered to be "inventoried" by definition. This can be more effectively accomplished by first grouping items by similarity, i.e., purpose, size, performance characteristics, etc., and then assigning pairs of employees to count, record and tag all merchandise within a specific area. Leaders may be appointed to "float" among pairs of employees, answering questions and resolving problems, so as to avoid delaying the process.

The inventory count and location should be recorded next to the appropriate item found on the Inventory Detail Listing. Any items accounted for, but not found on the Inventory Detail Listing, should be noted on the listing.

## **c. Reconcile Actual to Recorded Inventory**

Using departments should review the Purchasing Procedure for County Inventory Management located on the Harris County Employee Intranet, <https://webhc.hctx.net/SitePages/Home.aspx> [www.hcintranet.net](http://www.hcintranet.net) for instructions on reconciling actual to recorded inventory.

## **d. Notify Purchasing Services of Required Inventory Changes**

The department shall notify Purchasing Services of any required changes or submit Inventory Completion Statement (County Auditor's Form 3368) no later than the date specified in the instructions provided by Purchasing Services. Purchasing Services will, in turn, update the official County records, and forward the inventory results to the County Auditor, the user department, and the board that approves the appointment of the Purchasing Agent. The department should maintain a copy of its latest reconciled inventory.

## **3. Disposal of County Property**

The Purchasing Agent has been designated as the representative of Commissioners Court to dispose of County salvage or surplus property [LGC § 262.011 (i)]. Surplus items and salvage items, other than waste paper, may be transferred to Purchasing Services for sale. The user department, using one of several available disposal contracts, may dispose of salvage and/or waste items. However, all Capital Assets, Non- Capital Assets must be submitted to Purchasing Services for Commissioners Court approval prior to removal from the inventory records and disposal.

Upon proper authorization from the Court, Purchasing Services will remove and/or delete an inventory item from County inventory records and notify the department. The department must dispose of the



# Harris County Inventory Policy Guidelines

item. Through the Purchasing Agent, County property may be disposed of accordingly:

- by sealed bid,
- by public auction,
- discarded as worthless scrap, or
- trade-in approved by Commissioners Court.

## 3.1 Surplus Property

Purchasing Services is responsible for the storage of surplus County property and will make it available for transfer to County departments as requested [LGC § 262.011 (i)]. Departments are encouraged to check the warehouse inventory for surplus items prior to requesting a purchase. Some surplus items may be viewed on the Purchasing website.

## 3.2 Salvage or Waste Property

With the approval of Commissioners Court, salvage or waste property may be disposed of as follows:

### a. Disposal Contracts

The County has disposal contracts awarded by Commissioners Court that departments are authorized to use. Inventoried items require a County Property Deletion/Indemnification Request Form (County Auditor's Form 3351). Disposal contracts such as, but not limited to, the sale of scrap metal, surplus/salvage petroleum products, used vehicle components, and scrap tires may be used as needed. Please contact the Purchasing Office for further information.

### b. Waste Items

These may be disposed of as trash. The Purchasing Office is available for assistance or Facilities and Property Maintenance may be contacted for removal. Inventoried items require a County Property Deletion/Indemnification Request Form (County Auditor's Form 3351).

### c. Recycling

Various products and materials such as paper, cardboard, etc., can be disposed of via Harris County Disposal contracts. Departments are encouraged to participate in these efforts to conserve and recycle as well as use "green" products in their day-to-day activities. Buyers can recommend recycled products for purchase when appropriate; for additional information, please contact the Purchasing Office.

### d. Trade In

A trade in may be in the best interest of the County if the trade-in price offered is greater than the anticipated amount that may be received by other means. Trade-in's shall be part of the specifications and coordinated through the Purchasing Office. For additional information, please contact the appropriate buyer in the Purchasing Office.



# Harris County Inventory Policy Guidelines

## e. **Sealed Bids**

Sealed bids may be a viable means of property disposal. For additional information, please contact the Purchasing Office.

## f. **Auctions**

Auctions may be a viable means of property disposal. Notices for sale of County property are properly published in a newspaper of general circulation and may be auctioned on the County's Internet site. For additional information, please contact Purchasing Services.