



HARRIS COUNTY PURCHASING AGENT

**PROCUREMENT POLICY
OF
HARRIS COUNTY**

FOREWORD

This document, in addition to any corresponding policy documents applicable to certain 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 January 4, 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 federally-funded purchases or other procurement policies expressly referenced in this policy.

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GLOSSARY OF TERMS

Addendum to Purchase Order	Any change in quantity, pricing, additions or deletions to an existing purchase order. Addendums are initiated by end users through a request for purchase order.
Agreement	A formal, written agreement executed by the County or one or more of the Other Entities and a vendor, containing the terms and conditions under which goods and/or services are to be furnished to the County. An Agreement, when properly signed by the authorized Harris County representatives, is a commitment for County funds.
Amendment	A legally enforceable modification to an existing agreement that is prepared or reviewed by Harris County Attorney's Office.
Bidder (non-resident)	A person or entity whose principal place of business is not in the State of Texas.
Bidder (Texas resident)	A person or entity whose principal place of business is in the State of Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
Calamity	The purchase of an item required to relieve the necessity of the citizens or to preserve the property of Harris County. Commissioners Court must approve the calamity as an exemption to waive the competitive bid requirements.
Capital Assets	County personal property with a unit value of \$5,000 or more. These items are recorded as fixed assets on the General Ledger, depreciated over the useful life of the asset, and must be recorded on Harris County Inventory Listing. These items are physically tagged by the Purchasing Office with a preprinted inventory identification number.
Change Order	A change in plans, specifications, price, or quantity to an existing contract. This term does not refer to amendments prepared by Harris County Attorney's Office; though some change orders may also require an amendment. ¹
Competitive Procurement Procedure (Advertised)	The process in which the Purchasing Office procures goods and/or services through the development of specifications, solicitation of bids or proposals through advertisement within the legal time frame, evaluation of responses and making recommendations, including awards, to Commissioners Court. This process is utilized when the anticipated expenditure exceeds the competitive bid limit (currently \$50,000 for Harris County and County departments, and as required by law for Other Entities).
Competitive Procurement Procedure (Unadvertised)	The process used by the Purchasing Office when advertised competitive bids are not required by law. Generally, this process is used for purchases less than the competitive bid limit or for purchases utilizing state contracts or cooperatives.
Construction Projects	Public Works and other projects which include the construction, renovation, erection, alteration, improvement, demolition and repair work involving any public owned, leased or operated facility. The Purchasing Office generates the competitive bid/CSP/RFP/RFQ documents, advertises, receives, and evaluates the responses in conjunction with using department(s) and makes award recommendations to Commissioners Court. The Purchasing Office also advertises, receives and presents the Harris County Toll Road Authority and Flood Control District bids to Commissioners Court; however, these entities make award recommendations to Commissioners Court independently.

¹ See also Tex. Loc. Gov't Code Section 262.031.

Contract	A formal, written agreement executed by the County and a vendor, containing the terms and conditions under which goods and/or services are to be furnished to the County. A contract, when properly signed by the authorized Harris County representatives, is a commitment for County funds.
Governing Authority	Designation of the governing body which has the contracting authority for that agency, i.e. Harris County Commissioners Court, Harris County Hospital District Board of Managers, Community Health Choice, Inc. Board of Directors, and Juvenile Probation Board.
Interlocal Agreement	A contract between governmental agencies to provide cooperative sharing of resources for mutual benefit as defined by Texas Government Code (TGC) §§ 791.001 et seq.
Item	Any service, equipment, goods, or other tangible or intangible personal property, including insurance and high technology as defined by LGC § 262.022(5).
Personal Services	Services which are performed by an individual and not a company or corporation.
Professional Services	Services which require a technical skill or unique function within a scope of practice such as engineering, architecture, accounting, and medicine. If the anticipated cost exceeds the current bid limit, Commissioners Court must exempt the purchase from the competitive bid process as defined by TGC §§ 2254.001 et seq.
Project	The purchase of an item(s) requiring the expenditure of public funds, by the same County officer, department or entity, generally at the same location within a given time frame. If Harris County officer, department or entity expects to exceed the statutory competitive bid limit with the same or generally the same category of vendors, then the purchase is subject to the competitive bidding or the request for proposal process. Expenditures may not be broken down into components, or differing timeframes, to avoid the competitive bid or the request for proposal process, LGC §§ 262.023(a) and (c).
Purchase	Any acquisition of an item including a lease or revenue contract. In accordance with LGC §262.011(f), “The County Auditor may not draw and Harris County Treasurer may not honor an electronic transfer, check or warrant for a purchase unless the purchase is made by the purchasing agent or on a competitive bid as provided by law.”
Purchase Order	An official and binding document issued by the purchasing agent to a vendor authorizing the expenditure of funds for goods and services.
Requisition	A document, electronic or otherwise, used by departments to submit a request to the Purchasing Office for the procurement of supplies, services, or equipment. A requisition must describe the item specifications and/or purchasing needs as completely as possible.
Salvage Property	Personal property that has no value for the purpose for which it was originally intended, but may have value for other use.
Sole Source Item	An item that can only be purchased from one source. Purchases of sole source items in excess of the statutory competitive bid limit must have a written statement from the purchasing agent declaring an exemption to the bid process and be approved by Commissioners Court.
Surplus Property	Personal property not currently needed by a department, but may have future usefulness within Harris County. These items may be transferred to other departments by the purchasing agent.

User Department	Generally, a County department requiring the services of the Purchasing Office.
Vendor	A person or business that offers goods or services for sale. Another term for vendor is supplier or contractor.

I. OVERVIEW

The standards provided in this Policy are basic principles that Harris County shall adhere to when contracting for needed items. 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.

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. Harris County shall follow state and/or local laws on procurement, as applicable. This Local Procurement Policy (“Policy”) is hereby established for Harris County (“Harris County”) by official action of the Harris County Judge and Commissioners Court. This Policy reflects applicable state and local laws and regulations.

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

1. Texas Local Government Code Chapter 262 – Purchasing and Contracting Authority of Counties in Texas
2. Texas Local Government Code Chapter 263 – Sale or Lease of Property by Counties
3. Texas Local Government Code Chapter 271 – Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments
4. Texas Transportation Code Chapter 284 - Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties²
5. Texas Government Code Chapter 2251 – Prompt Payment Act
6. Texas Government Code Chapter 2252 – Contracts with Governmental Entity
7. Texas Government Code Chapter 2253 – Public Work Performance and Payment Bonds
8. Texas Government Code Chapter 2254 – Professional and Consulting Services
9. Texas Government Code Chapter 2269 – Contracting and Delivery Procedures for Construction Projects
10. 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
11. Texas Health & Safety Code Section 361.426 – Governmental Entity Preference for Recycled Products
12. Texas Government Code Section 140.003 – Specialized Local Entities

² 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 the county adopts an order electing to be governed by this chapter for a project to be developed by the county under Chapter 284.”).

13. Texas Government Code Chapter 791 – Interlocal Cooperation

Harris County may, in its discretion, amend this Policy to conform with applicable 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 non-federal funding under state and local laws and regulations; provided, however, additional and/or distinct requirements and policies may apply to certain federally-funded purchases and purchases by Other Entities, as that term is defined in Section C, below. All procurement will be done in accordance with Texas Local Government Code ("LGC"), Texas Government Code ("TGC"), and other relevant law and best business practices.

B. AUTHORITY

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. 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.³ 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.⁴ Violation of these laws by any County official or employee carry criminal penalties and removal from public office⁵, in addition to potential employment impacts up to and including termination.

³ Texas Local Government Code Section 262.011(d).

⁴ Texas Local Government Code Section 262.011(e).

⁵ Texas Local Government Code Sections 262.011(m) & 262.023.

C. OFFICE OF THE PURCHASING AGENT

The Harris County purchasing agent is appointed by a Board comprised of three judges of the district courts in the county and two members of Commissioners Court.⁶

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 is created for the purpose of providing a “checks and balances” system for 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. 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.⁷

The Harris County 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 exceptions⁸)
2. Harris County Flood Control District⁹
3. Harris County Toll Road Authority¹⁰
4. Community Supervision and Corrections Department
5. Harris County Resources for Children and Adults

⁶ Texas Local Government Code Section 262.011(a).

⁷ Texas Tax Code 151.309, as amended.

⁸ This policy shall not apply to purchases within the exclusive authority of an official other than the county Commissioners Court; Tex. Atty. Gen. Op. JC0122 (1999).

⁹ The district was created by a special local law (Acts 1937, 45th Leg., ch. 360, Section1) 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 the County.

¹⁰ 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.

6. Harris County Hospital District dba. Harris Health System¹¹
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 procurement 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 local 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 local 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.

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.¹² 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

¹¹ See Harris County Health District Purchasing Manual, revised May 2011; See also Tex. Loc. Gov’t Code Section 262.011(h) (“The county purchasing agent is not required to make purchases for a municipal-county hospital or other joint undertaking of the municipality and county.”).

¹² Texas Local Government Code Section 262.011(d).

purchase contract.¹³ The purchasing agent shall also maintain an inventory of County property and transfer surplus County property between County departments as required.¹⁴ Violation of these laws by any County official or employee carries criminal penalties.¹⁵

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,¹⁶ which includes the initial procurement, renewal, termination of an existing contract, changes in existing contracts, contractor oversight, and management of disputes.

4. County Inventory Management

The Purchasing Office shall be responsible for the storage, transfer, and/or disposal of County property, including recycling.¹⁷

5. Historically Underutilized Business Compliance

Pursuant to the Harris County Minority- and Woman-Owned Business Enterprise Program Policy, as adopted by the Commissioners Court and amended from time to time, the Purchasing Office shall coordinate with the Office of Economic Equity and Opportunity regarding the County’s MWBE Program and any other goals, requirements or processes regarding utilization and inclusion of Historically Underutilized Businesses in procurement under this policy.

¹³ Texas Local Government Code Section 262.011(e).

¹⁴ Texas Local Government Code Section 262.011(i)-(j).

¹⁵ Texas Local Government Code Sections 262.011(m) & 262.023.

¹⁶ See Texas Local Government Code Section 262.001.

¹⁷ Texas Local Government Code Section 262.011(i).

6. Local Preference Program

The Purchasing Office, subject to approval by the Commissioners Court when required, shall oversee the application of local preference for the purchase of goods or real property pursuant to Local Government Code § 271.905 and may consider doing so on a case-by-case basis. In relevant situations, the Purchasing Office shall use the following criteria in determining whether to recommend a higher bid from a local vendor:

- a. the employment of residents of Harris County created through the award of the bid to the local vendor; and
- b. any increase in tax revenue created through the award of the bid to the local vendor.

F. PURPOSE

Pursuant to Texas Local Government Code Section 262.011(o), the purchasing agent is required to adopt the rules and procedures necessary to implement the Agent's duties under applicable Texas law, subject to approval by the Commissioners court. Therefore, the purpose of this Policy is to:

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

II. 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 Office 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 complying with all requirements of Harris County's non-federal funding and shall manage and administer funding to ensure it is expended in full accordance with State and Local law, and applicable Federal regulations.

A. MISSION STATEMENT

The mission of the Harris County 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 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.

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. 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.

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 conduct. 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:

- 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://hrm.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.

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 and Texas state law, 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.

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. Further, Harris County's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.¹⁸

E. HARRIS COUNTY PROCUREMENT MANUAL

The purchasing agent, subject to approval of the Commissioners Court, shall establish a set of procurement procedures in the "Harris County 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 federal, state and local law and this Policy, as amended from time

¹⁸ 2 C.F.R. 200.338.

to time. 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.

The Purchasing Office shall be responsible for reviewing and monitoring all procurement methods to ensure the most economical and efficient use of funds. The Purchasing Office shall also maintain an inventory of County property and transfer surplus County property between County departments as required.¹⁹ The Purchasing Office shall consider the use of excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. The purchasing agent may cooperate with the purchasing agent of a municipality in the county to purchase any item in volume as may be necessary. The county treasurer shall honor an electronic transfer, check, or warrant drawn by the county auditor to reimburse the municipality's purchasing agent making the purchase for the county.²⁰

G. INTERLOCAL AGREEMENTS & COOPERATIVE PURCHASING

State laws allow procurement through federal, state, and local governmental agencies as well as cooperative purchasing organizations.²¹ 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.²² The purchasing agent is required to effect as much competition as practical for the circumstances when using a cooperative procurement source.

The purchasing agent may solicit advertised bids if deemed appropriate to ensure the best values for Harris County. 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 Office 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, 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

¹⁹ Texas Local Government Code Section 262.011(j).

²⁰ Texas Local Government Code Section 262.011(g).

²¹ Texas Local Government Code Sections 271.081-083 and 271.101-103; See also Texas Government Code Section 793.002.

²² Texas Government Code Section 791.011(d)(1).

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. The County's procurement files shall contain a copy of the Interlocal Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and
- iv. 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. The County may not use an interlocal contract and add extra or unrelated goods or services that were not part of the original contract. The 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.

H. VALUE ENGINEERING

The Purchasing Office shall determine which procurement method provides the best value for Harris County and include the required information in the requests for proposals or qualifications.²³ The Purchasing Office shall also use value engineering methods for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

The practice of value engineering includes a certain amount of expense which must be justified by potential cost savings. Accordingly, the Purchasing Office 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. Further, when a construction contract for a civil works project is procured under Texas Government Code Chapter 2269, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria; provided, however, the weighted value of price may be as low as 36.9 percent if the Commissioners Court finds that assigning

²³ Texas Government Code Section 2269.056.

a lower weighted value to price is in the public interest.²⁴ Not later than the seventh business day after the date a construction contract procured under Chapter 2269 is awarded, Harris County shall make the evaluations, including any scores, public and provide them to all offerors.²⁵

I. COMPETITION

Texas law prohibits all separate, sequential, or component purchases made with the intent of avoiding the competitive procurement requirements.²⁶ The Purchasing Office shall not break down requirements into multiple purchases (commonly called “bid splitting” or “unbundling”) merely to permit use of the small purchase procedures or avoid any competitive procurement requirements that apply. However, larger requirements may be broken into smaller ones to afford small, woman and minority businesses, including HUBs as defined by state law, 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. 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.²⁷

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;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- 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;²⁸ and
- Any arbitrary action in the procurement process.

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.²⁹ 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 be procured and,

²⁴ Texas Government Code Section 2269.153(c)-(d).

²⁵ Texas Government Code Section 2269.155(d).

²⁶ Texas Local Government Code Section 262.023(c).

²⁷ Texas Attorney General Opinion Nos. JM-282, cited in Texas Attorney General Opinion No. JC-0124.

²⁸ See, e.g., *Texas Highway Commission v. Texas Ass’n of Steel Importers, Inc.*, 372 S.W.2d 525 (Tex. 1963).

²⁹ See, e.g. Tex. Atty. Gen. Op. No. MW-449 (1982).

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. 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;³⁰ 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."³¹

Additionally, the Purchasing Office shall identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

J. BONDS / GUARANTEES

The Purchasing Office and all vendors shall comply with all applicable State law regarding bonding requirements. 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 Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon’s Texas Insurance Code).

1. Bid Bonds

For construction, public works, or facility improvement contracts or subcontracts expected to exceed \$100,000, Harris County shall require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the bid price.³² 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. A bid bond must be executed with a surety company authorized to do business in this state.³³

³⁰ Texas Attorney General Opinion No. JC-0124.

³¹ Texas Attorney General Opinion No. JC-0124.

³² Texas Local Government Code Section 262.032.

³³ Texas Local Government Code Section 262.032.

2. Performance Bonds

If a project is for a public works contract, contractors are required to provide a performance bond if the contract is in excess of \$100,000 and, Harris County shall require a performance bond on the part of the contractor for 100 percent of the contract price.³⁴ A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. The performance bond is:

1. Solely for the protection of Harris County;
2. In the entire amount of the contract; and
3. Conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.³⁵

3. Payment Bonds

If a project is for a public works contract, contractors are required to provide a payment bond if the contract is in excess of \$25,000.³⁶ 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 a governmental entity, such as Harris County, must be payable to and its form must be approved by the awarding governmental entity.

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.³⁷

K. PREVAILING WAGES

When applicable, for any contract involving the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in

³⁴ Texas Local Government Code Section 262.032.

³⁵ Texas Government Code Section 2253.021.

³⁶ Texas Government Code Section 2253.021.

³⁷ Texas Government Code Section 262.032(c)

whole or in part from public funds, without regard to whether the work is done under public supervision or direction, Harris County shall comply with the prevailing wage requirements under Texas Government Code Section 2258.

In accordance with the statute, for each contract subject to prevailing wages, contractors must pay the prevailing wage rates for building construction for each craft or type of worker or mechanic employed in the execution of any building construction or repair under the contract in accordance with Texas Government Code Section 2258. A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:

1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed;
2. Not less than the general prevailing rate of per diem wages for legal holiday and overtime work³⁸; and
3. In accordance with the Davis Bacon prevailing wage rates and definitions.³⁹

When prevailing wages have been determined to be applicable, the Purchasing Office shall place a copy of the current prevailing wage determination in each solicitation. The decision to award contract or subcontract must be conditioned upon the acceptance of the wage determination. Harris County shall report all suspected or reported violations to the appropriate agency.

L. RESPONSIBILITY OF BIDDERS

The Purchasing Office, subject to approval of Commissioners' Court when required, 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 and such considerations shall be included in the request for bids or proposal documents.

The Purchasing Office, subject to approval of Commissioners' Court when required, shall not award any contract until the prospective contractor, i.e., low responsive bidder or successful offeror, has been determined to be responsible in conformance with the request for bids or proposal documents. 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 them⁴⁰;

³⁸ Texas Government Code Section 2258.021

³⁹ As adopted by Harris County for County and Flood Control District projects effective February 1, 2006.

⁴⁰ FAR 9.104-9.105

- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them⁴¹;
- 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 commitments⁴²;
- Have a satisfactory performance record⁴³;
- Have a satisfactory record of integrity and business ethics⁴⁴; and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended or debarred.

Harris County shall conduct research to determine that a prospective contractor is responsible.

M. RECORDKEEPING

The Purchasing Office shall maintain records sufficient to detail the history of each procurement action. 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 price⁴⁵.

N. ELIGIBILITY & DEBARMENT STATUS

Prior to the award of a contract with a contractor, the Purchasing Office shall verify eligibility and debarment status.

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.

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". All procurement transactions, regardless of dollar amount, shall be conducted so as to provide maximum full and open competition.

⁴¹ FAR 9.104-9.105

⁴² FAR 9.104-9.105

⁴³ FAR 9.104-9.105

⁴⁴ FAR 9.104-9.105

⁴⁵ 2 C.F.R. 200.318(i)

O. VENDOR OUTREACH

Harris County supports the principles of equal opportunity. The Purchasing Office 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.

The Purchasing Office may maintain a list of vendors and shall distribute notice of contract opportunities to the list. The Purchasing Office 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.

P. CONTRACTING WITH HISTORICALLY UNDERUTILIZED BUSINESSES

Harris County supports the purpose of the Historically Underutilized Business (HUB)⁴⁶ program to promote full and equal business opportunities for all businesses in an effort to remedy disparity in procurement and contracting. The Office of Economic Equity and Opportunity works with the Purchasing Office to ensure that MBEs and WBEs have an equal opportunity to participate in County Contracts. The entire Minority-and Woman-Owned Business Enterprise Program Policy is included as Attachment A and can be found here:

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

III. PROCUREMENT METHODS

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

A. INFORMAL PROCUREMENTS

Informal procurements, or "unadvertised" procurements, are the process used by the Purchasing Office when advertised competitive procurement is not required by law. Generally, this process is used for purchases less than the competitive bid limit of \$50,000 or for purchases utilizing state contracts or cooperatives.

Only the purchasing agent may commit Harris County for a purchase of an item that has not been formally competitively bid; provided, however, that the Executive Director of the Harris County Juvenile Probation Department/Chief Juvenile Probation Officer is hereby authorized to execute

⁴⁶See Texas Government Code Section 2161.001(2); Procurement under Transportation Code Chapter 284 may be subject to additional HUB goals, including the goals adopted by the department of transportation under Texas Transportation Code Section 201.702.

contracts for the Juvenile Probation Department up to \$100,000.00, subject to the approval of the purchasing agent.⁴⁷

Texas law prohibits all separate, sequential or component purchases made with the intent of avoiding the competitive bid requirements.⁴⁸ The purchasing agent will not issue purchase orders, and the Auditor will not pay, for purchases made outside the directives of this policy.

Unadvertised purchases, those equal to or below the competitive bid limit, do not require an advertised solicitation placed in a local newspaper of general circulation prior to procurement. However, the purchasing agent reserves the right to advertise for bids or proposals for purchases of any amount. Requisitions for purchases equal to or below the competitive bid limit will be received in the Purchasing Office and assigned to the appropriate buyer by commodity. Although not required, user departments may include quotes to aid the buyer in comparison of price, quality and delivery terms. The buyer will allow for as much competition as practical, consistent with user requirements, dollar value of procurement, and purchasing directives. Typically, pricing and delivery terms will be handled by email, telephone, or fax, if advertised solicitations are not required.

1. Micro Purchases

Micro purchases are acquisitions of products or services where the aggregate acquisition price does not exceed the micro purchase threshold, which Harris County has set at \$5,000. To the extent practicable, Harris County shall distribute micro purchases equitably among qualified suppliers. 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 its files accordingly.

2. 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 competitive bid limit of \$50,000.⁴⁹ If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. To the extent practicable, Harris County shall distribute small purchases equitably among qualified suppliers. At the discretion of the purchasing agent, small 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.

⁴⁷ Harris County Juvenile Board Policy Regarding Authority of Chief Juvenile Probation Officer to Execute Contracts adopted February 26, 2003. Further, any contract executed by the Executive Director shall contain a provision that the agreement is subject to approval by the Harris County Purchasing agent as evidenced by the issuance of a purchase order.

⁴⁸ Texas Local Government Code Section 262.023(c).

⁴⁹ Texas Local Government Code Section 262.023.

B. FORMAL PROCUREMENT METHODS

Formal procurements, also known as competitive or “advertised” procurements, are those purchases in excess of \$50,000⁵⁰ and subject to the County Purchasing Act. The County Purchasing Act provides the requirements that must be followed by the Purchasing Office when competitive procurement is required under Texas law. For purchases in excess of the \$50,000 threshold, Harris County shall use competitive bidding or competitive proposal procedures under Texas Local Government Code Chapter 262, the reverse auction procedure as defined by Texas Government Code Section 2155.062(d), or the methods described by Texas Government Code Chapter 2269. The purchasing agent is authorized to determine the appropriate procurement method that provides the best value for Harris County, in accordance with this policy and the Harris County Procurement Manual.⁵¹

Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising⁵² unless a non-competitive procurement can be used in accordance with below. Further, with the exception of contracts involving the expenditure of federal funds, Harris County may not award a contract for construction, improvements, services, or public works projects or for the purchase of supplies, materials, or equipment to a non-resident bidder unless the non-resident's bid is lower than the lowest bid submitted by a responsible Texas bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract in the state in which the non-resident bidder's principal place of business is located or the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in; the state in which the nonresident's principal place of business is located; or a state in which the nonresident is a resident manufacturer.⁵³

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.⁵⁴ All procurement responses received on a day when Commissioners Court is not scheduled for a regular meeting are automatically 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

⁵⁰ Texas Local Government Code Section 262.023.

⁵¹ Texas Government Code Section 2269.053.

⁵² Texas Local Government Code Section 262.025.

⁵³ Texas Government Code Section 2252.002.

⁵⁴ Texas Local Government Code Section 262.026(a); Original delegation of authority effective September 1, 1999.

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.⁵⁵

The following formal methods of procurement are used for procurement of property or services above the \$50,000 threshold.

1. Sealed Bids

Sealed bids (sometimes known as “competitive bids” or “formal advertising”) are used when the goods or services are expected to exceed the competitive procurement threshold, which for Harris County has been set at \$50,000.⁵⁶ Under sealed bids, Purchasing Office shall publicly solicit bids, through an Invitation for Bid (IFB), and award a firm fixed price contract (lump sum or unit price) awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is responsive and the lowest in price. This process may be undertaken only under the supervision of the purchasing agent.⁵⁷

The sealed bid method shall be Harris County’s preferred method for procuring construction, provided the following conditions are present:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; 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.

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. The IFB must be advertised at least once a week in a local newspaper of general circulation in the county, with the first publication occurring before the 14th day before the date of bid opening;⁵⁸
- The IFB, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- Bids shall be received in a fair and confidential manner;⁵⁹

The Purchasing Office shall accept bids in hard-copy format or through electronic transmission; provided, however, that if a bid or proposal is required to be sealed in response

⁵⁵ Texas Local Government Code Section 262.027.

⁵⁶ Texas Local Government Code Section 262.023.

⁵⁷ Texas Local Government Code Section 262.011(e).

⁵⁸ Texas Local Government Code Section 262.021.

⁵⁹ Texas Local government Code Section 262.0225(b).

to a particular IFB, then Harris County may, by Order of the Commissioners' Court, require that all responses be by hard-copy format or require that all responses be submitted through electronic transmission as designated in the IFB.⁶⁰

- All bids will be opened at the time and place prescribed in the IFB. The date specified in the IFB may be extended if the Commissioners Court determines that the extension is in the best interest of the county. All bids, including those received before an extension is made, must be opened at the same time;⁶¹
- Opened bids shall be kept on file and available for inspection by anyone desiring to see them until the first anniversary of the date of opening. Opened bids are subject to disclosure under Chapter 552, Government Code;⁶²
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- Any or all bids may be rejected if there is a sound documented reason.

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.⁶³ Competitive bidding requires approval of the contract by the Commissioners Court before final execution of a contract.

2. Competitive Proposals

Also called contracting by negotiation, the competitive proposal method is used for requirements 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. 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 three competitive proposal methods: a Request for Proposal (“RFP”), Competitive Sealed Proposals (“CSP”) 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. A CSP is a form of procurement used for public works projects in which both qualifications and price may be requested and used as evaluation factors to select a general contractor for the construction, rehabilitation, alteration, or repair of a facility. An RFQ is a form of procurement in which

⁶⁰ Texas Local government Code Section 262.0225(c) & (c-1) (The County must make the technology to electronically submit a response available to any hard-copy bidder if that is a requirement of the IFB).

⁶¹ Texas Local Government Code Section 262.026(a).

⁶² Texas Local Government Code Section 262.026(b).

⁶³ Texas Local Government Code Section 262.026.

only technical qualifications are evaluated and price is not requested nor used as an evaluation factor. In either case, the Purchasing Office shall coordinate and oversee the appointment of a committee responsible for evaluation and negotiation of RFP, CSP 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 B.

The Office of County Engineering, Harris County Flood Control District, and Harris County Toll Road Authority/Harris County Toll Road Corporation also conduct RFQs and make recommendations to Commissioner Court for selection of Professional Services. Each division administers their own procedures, or may request the Purchasing Office administer the RFQ process.

Each competitive proposals procurement method is described in further detail below.

i. Competitive Sealed Proposals (CSP)

Competitive Sealed Proposals (CSP) may be used when construction services for the alteration, rehabilitation, or repair of a facility are expected to exceed the competitive procurement threshold. The Purchasing Office shall publicly solicit for the CSP, evaluate and award the responsible bidder who provides the best value and overall highest ranking to Harris County. This process may be undertaken only under the supervision of the purchasing agent.

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

- An architect or engineer shall be selected or designated to prepare construction documents for the project;⁶⁴
- Prior to advertising a CSP, the purchasing agent shall determine which method provides the best value for Harris County if a procurement method other than competitive bidding is used;⁶⁵
- The CSP shall include construction documents, selection criteria⁶⁶ and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request;⁶⁷

⁶⁴ Texas Government Code Section 2269.152.

⁶⁵ Texas Government Code Section 2269.056(a).

⁶⁶ Texas Government Code Section 2269.055(b) ("In determining the award of a contract under this chapter, the governmental entity shall:(1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and (2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.").

⁶⁷ Texas Government Code Section 2269.153(b).

- The criteria in the CSP may include: (1) the price; (2) the proposer's experience and reputation; (3) the quality of the proposer's goods or services; (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses; (5) the proposer's safety record; (6) the proposer's proposed personnel; (7) whether the proposer's financial capability is appropriate to the size and scope of the project; and (8) any other relevant factor specifically listed in the CSP;⁶⁸
- The weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria; provided, however, that if the purchasing agent determines that assigning a lower weighted value to price is in the public interest, the purchasing agent may request Commissioners Court approval to assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria;⁶⁹
- Public notice of the time and place the response to CSP will be received and opened must be published in a newspaper of general circulation in Harris County once each week for at least two weeks before the deadline for receiving CSP responses;⁷⁰
- Proposals shall be solicited from an adequate number of qualified sources;
- The county official shall receive, publicly open, and read aloud the names of the proposers and any monetary proposals made by the proposers and not later than the 45th day after the date on which the proposals are opened, evaluate and rank each proposal submitted in relation to the published selection criteria;⁷¹
- The county official shall present the evaluated and ranked proposals to Commissioners Court. The award of the contract shall be made to the responsible proposer whose proposal is determined to be the best value based on the selection criteria in the CSP according to the weighted value for those criteria and its ranking evaluation;⁷²
- After award of the contract, the purchasing agent shall attempt to negotiate a contract with the selected proposer. Harris County and its architect or engineer may discuss with the selected proposer options for a scope or time modification and any price change associated with the modification;⁷³

⁶⁸ Texas Government Code Section 2269.055(a).

⁶⁹ Texas Government Code Section 2269.153(c)-(d).

⁷⁰ Texas Government Code Section 2269.052.

⁷¹ Texas Government Code Section 2269.154.

⁷² Texas Government Code Section 2269.155(a).

⁷³ Texas Government Code Section 2269.155(b).

- If the purchasing agent is unable to negotiate a satisfactory contract with the selected proposer, the purchasing agent, subject to prior approval by the Commissioners Court, shall, formally and in writing, end negotiations with that proposer and proceed to the next proposer in the order of the selection ranking until a contract is reached or all proposals are rejected; and⁷⁴
- Not later than the seventh business day after the date the contract is awarded, Harris County shall make the evaluations, including any scores, public and provide them to all proposers.⁷⁵

ii. Request for Proposal (RFP)

If the purchasing agent determines that it is impractical to prepare detailed specifications necessary for the sealed bidding process, the purchasing agent may follow either: (i) the Alternative Multistep Competitive Proposal procedures pursuant to Texas Local Government Code Section 262.0295, or (ii) the Alternative Competitive Proposal Procedure for Certain Goods and Services pursuant to Texas Local Government Code Section 262.030 for the purchase of insurance, high technology items, landscape maintenance, travel management, recycling, or other items when the county official who makes purchases for the county determines, with the consent of the Commissioners Court, that it is in the best interest of the county to make a request for proposals. An RFP is generally appropriate to obtain services such as consulting, construction management, estimating, or other technical or specialized services.

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

- Public notice for the RFP must be made in the same manner as sealed bidding, except that the notice may include a general description of the item to be purchased, instead of the specifications describing the item or a statement of where the specifications may be obtained, and may request the submission of unpriced proposals;⁷⁶
- RFPs shall identify all evaluation criteria and factors for award and their relative importance.⁷⁷ Any response to publicized requests for proposals shall be considered to the maximum extent practical;
- Proposals shall be solicited from an adequate number of qualified sources;
- On the date specified in the notice, the county official shall open the proposals and either: (i) for purchases performed under the Alternative Multistep Competitive Proposal procedures of Texas Local Government Code Section 262.0295, within

⁷⁴ Texas Government Code Section 2269.155(c).

⁷⁵ Texas Government Code Section 2269.155(d).

⁷⁶ Texas Local Government Code Sections 262.0295(b) & 262.030(b).

⁷⁷ Texas Local Government Code Sections 262.0295(b) & 262.030(b).

seven days after that date, solicit by mailed request priced proposals from the persons who submitted proposals and who qualified under the criteria stated in the first solicitation;⁷⁸ or (ii) for purchases performed under the Alternative Competitive Proposal procedures of Texas Local Government Code Section 262.030, conduct discussions in accordance with the Harris County Procurement Manual and the RFP with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award;⁷⁹

- Harris County shall have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- For purchases performed under the Alternative Multistep Competitive Proposal procedures of Texas Local Government Code Section 262.0295, within 30 days after the date the unpriced proposals are opened, the county official shall present the priced proposals to Commissioners Court;⁸⁰
- The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest and best evaluated offer resulting from negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded;⁸¹ and
- As provided in the RFP, discussion may be conducted with responsible offerors who submit priced proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.⁸²

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

iii. Request for Qualifications (RFQ) / Qualifications-Based Procurement

When procuring for “professional services”, under Texas law, Harris County shall conduct its procurements in accordance with the Professional Services Procurement Act. Professional services are defined under Texas Government Code Section 2254.002. Under this definition, professional services include, but are not limited to accounting, architecture,

⁷⁸ Texas Local Government Code Section 262.0295(c).

⁷⁹ Texas Local Government Code Section 262.030(e).

⁸⁰ Texas Local Government Code Section 262.0295(d).

⁸¹ Texas Local Government Code Sections 262.0295(d) & 262.030(b).

⁸² Texas Local Government Code Sections 262.0295(e) & 262.030(e).

landscape architecture, land surveying, professional engineering, or real estate appraising. Harris County may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

- On the basis of demonstrated competence and qualifications to perform the services;⁸³ and
- For a fair and reasonable price.⁸⁴

In procuring and contracting for architectural, engineering, or land surveying services, the Purchasing Office shall ensure compliance with Texas Government Code Section 2254.004 and other applicable law.⁸⁵ 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 importance⁸⁶;
- Qualifications shall be solicited from an adequate number of qualified sources⁸⁷;
- Any response to publicized requests for qualifications shall be considered to the maximum extent practical;
- Harris County shall have a written method for conducting technical evaluations of the qualifications received and for selecting recipients; and
- The professional fees under the contract may not exceed any maximum provided by law.⁸⁸

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.

C. NONCOMPETITIVE PROCUREMENTS

Noncompetitive procurements may be used only when one or more of the following circumstances apply:

- Inadequate competition: If the competitive bidding requirements were followed, but the Purchasing Office received no responsive bids, the Purchasing Office may choose to procure the item under Texas Local Government Code Section 262.0245.
- Sole source: For an item or service that is available only from a single source, Commissioners Court may grant a sole source designation, usually valid for one year or for the term of the contract, at the request of the purchasing agent. The purchasing agent will review requests, conduct further

⁸³ Texas Government Code Section 2254.003(a)(1).

⁸⁴ Texas Government Code Section 2254.003(a)(2).

⁸⁵ Texas Government Code Section 2252.032(a)(1); Texas Civil Practice & Remedies Code Sections 130.002 and 130.0021.

⁸⁶ 2 C.F.R. 200.320

⁸⁷ 2 C.F.R. 200.320

⁸⁸ Texas Government Code Section 2254.003(b).

research as required, and make a sole source determination. The purchasing agent shall submit to Commissioners Court a signed statement verifying a sole source, and Commissioners Court may grant the exemption. Examples of sole source designations include manuscripts, books, monopolies, captive replacement parts or components, utility services, and software maintenance/license fees.

- Calamity: A purchase necessary to relieve the necessities of the citizens or to preserve the property of Harris County, and the calamity will not permit a delay resulting from competitive solicitation.
- Health & Safety: The purchase of an item necessary to preserve or protect the public health or safety of the residents of Harris County.⁸⁹
- Food: When the exemption for an item of food is granted by Commissioners Court, the purchasing agent will attempt to solicit at least three informal bids biannually, quarterly, or on a more frequent basis as appropriate. A record of these bids will be maintained for at least one year.
- Discretionary exemptions: The purchase falls under “discretionary exemptions” pursuant to Texas Local Government Code Section 262.024 or other express exemption under state law.

D. PURCHASE ORDERS

Purchase orders may be issued for professional and personal services following Commissioners Court approval of exemption from the competitive bid process.

E. ALTERNATIVE PROCUREMENT METHODS

1. 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.⁹⁰ 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. The County shall use a Job Order Contract only when a recurring need is anticipated.

The 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 proposals as appropriate. The

⁸⁹ Texas Local Government Code Section 262.024(a)(2).

⁹⁰ Texas Government Code Section 2269.401.

County shall establish the maximum aggregate contract price when it advertises the contract opportunity.⁹¹ Commissioners Court shall approve each job, task, or purchase order that exceeds \$500,000.⁹² The base term for a job order contract may not exceed two years; and Harris County may renew the contract annually for not more than three additional years.⁹³

2. 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.

3. Design-Build, Construction Manager-Agent, and Construction Manager-at-risk Alternatives for Public Works Projects

Pursuant to Texas Government Code Chapter 2269, Harris County may procure certain construction services for public works projects using the design-build method, construction manager-agent method, or construction manager-at-risk method. The purchasing agent is authorized to use these alternative procurement methods in place of the CSP method, subject to recommendation by the architect or engineer on the project that a particular alternative procurement method provides the best value for Harris County for the specific project.

i. Design-Build method

Harris County or Other Entities may use the design-build method for the construction, rehabilitation, alteration, or repair of roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities,

⁹¹ Texas Government Code Section 2269.403(b).

⁹² Texas Government Code Section 2269.403(c).

⁹³ Texas Government Code Section 2269.409.

desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects, or transit projects and types of projects related to those listed or incidental to those listed.⁹⁴ In using this method and in entering into a contract for the services of a design-build firm, the contracting entity and the design-build firm shall follow the procedures of Texas Government Code Chapter 2269, Subchapter H.⁹⁵ Neither Harris County nor other Entities may enter into contracts for more than six projects in any fiscal year.⁹⁶ Design-build contracts may cover only a single integrated project and may not include aggregated projects at multiple locations.⁹⁷

The contracting entity shall select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project.⁹⁸ The following criteria shall be used by the purchasing agent as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project the extent to which the entity can adequately define the project requirements, the time constraints for the delivery of the project, the ability to ensure that a competitive procurement can be held, and the capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.⁹⁹ The purchasing agent shall also consider the recommendation of the independent engineer or architect on the project as to the proper procurement method for the project.

The contracting entity must prepare both an RFQ and a design criteria package. The RFQ must include information on the civil works project site, project scope, project budget, project schedule, criteria for selection, the weighting of the criteria, and other information that may assist potential design-build firms in submitting proposals for the project.¹⁰⁰ The responding design-build firms shall be evaluated based on each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the RFQ; provided, however, that cost-related or price-related evaluation factors are not permitted at this stage.¹⁰¹ The design criteria package is a set of documents that: (i) provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and (ii) permits a design-build firm to assess the

⁹⁴ Texas Government Code Sections 2269.351(1) & 2269.353(a).

⁹⁵ Texas Government Code Section 2269.353(a).

⁹⁶ Texas Government Code Section 2269.354(a).

⁹⁷ Texas Government Code Section 2269.353(b).

⁹⁸ Texas Government Code Section 2269.355(a).

⁹⁹ Texas Government Code Section 2269.353(c).

¹⁰⁰ Texas Government Code Section 2269.357.

¹⁰¹ Texas Government Code Section 2269.359(a).

scope of work and the risk involved and submit a proposal on the project.¹⁰² Each responding design-build firm must select or designate each engineer that is a member of its team based on demonstrated competence and qualifications; and certify that the engineer was chosen pursuant to a process consistent with the RFQ requirements of the contracting entity.¹⁰³

The contracting entity shall qualify responding design-build firms to submit additional information and, if the entity chooses, to interview for final selection.¹⁰⁴ Qualified respondents shall be selected to submit proposals and the contracting entity shall select a design-build firm using a combination of technical and cost proposals.¹⁰⁵ A response must be submitted on or before the earlier of the time for submission requested by the contracting entity or the 180th day after the date in a public RFP.¹⁰⁶ The RFP must include: (i) a design criteria package; (ii) if the project site is identified, a geotechnical baseline report or other information that provides the design-build firm minimum geotechnical design parameters to submit a proposal; (iii) detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and (iv) the relative weighting of the technical and price proposals and the formula by which the proposals will be evaluated and ranked.¹⁰⁷ Each proposal must include a sealed technical proposal and a separate sealed cost proposal.¹⁰⁸ The technical proposal must address project approach, anticipated problems, proposed solutions to anticipated problems, ability to meet schedules, conceptual engineering design, and other information requested by the governmental entity.¹⁰⁹ The proposals shall first be opened, evaluated and ranked based on the technical proposals according to the scoring criteria in the RFP.¹¹⁰ Next, the proposals shall be evaluated and ranked based on cost proposals, with the final rankings based on a combined score according to the formula provided in the RFP.¹¹¹ The purchasing agent shall then follow the same process for award and negotiation of a contract as with CSPs until a contract is reached or negotiations with all ranked firms end.¹¹²

¹⁰² Texas Government Code Section 2269.357(b); see also Texas Government Code Section 2269.358 (The design criteria package may include budget or cost estimates, information on the site, performance criteria, special material requirements, initial design calculations, known utilities, capacity requirements, quality assurance and quality control requirements, the type, size, and location of structures and notice of any ordinances, rules, or goals adopted by the contracting entity relating to awarding contracts to historically underutilized businesses).

¹⁰³ Texas Government Code Section 2269.359(b).

¹⁰⁴ Texas Government Code Section 2269.359(c).

¹⁰⁵ Texas Government Code Section 2269.360-61

¹⁰⁶ Texas Government Code Section 2269.361.

¹⁰⁷ Texas Government Code Section 2269.361.

¹⁰⁸ Texas Government Code Section 2269.361(c).

¹⁰⁹ Texas Government Code Section 2269.351(d).

¹¹⁰ Texas Government Code Section 2269.361(e).

¹¹¹ Texas Government Code Section 2269.361(e).

¹¹² Texas Government Code Section 2269.362.

The contracting entity may be required by law to assume all risks and costs associated with: (i) scope changes and modifications, as requested by the contracting entity; (ii) unknown or differing site conditions unless otherwise provided in the RFP and final contract; (iii) regulatory permitting, if the contracting entity is responsible for those risks and costs by law or contract; and (iv) natural disasters and other force majeure events unless otherwise provided in the RFP and final contract.¹¹³ Further, the contracting entity may be required to assume all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.¹¹⁴ Design-build firms retain all rights to the work product submitted in a proposal unless a stipend¹¹⁵ for the engineering work is paid by the governmental entity in accordance with terms contained in the RFP.¹¹⁶ Harris County may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal and shall return all copies of the proposal and other information submitted to an unsuccessful offeror.¹¹⁷ Neither Harris County nor its agents or associated Other Entities may make use of any unique or non-ordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless it acquires a license from the unsuccessful offeror.¹¹⁸

The selected design-build firm's engineers shall submit all design elements and construction documents in the time and form provided by law;¹¹⁹ provided, however, that all design elements shall be submitted to the contracting entity prior to construction unless expressly provided otherwise in the contract documents. Payment and performance bonds shall be provided in accordance with applicable law; provided, however, that no performance or payment bond is required for the portion of a design-build contract that includes design services only.¹²⁰

¹¹³ Texas Government Code Section 2269.363.

¹¹⁴ Texas Government Code Section 2269.363.

¹¹⁵ Texas Government Code Section 2269.363(c) (“The governmental entity may offer an unsuccessful design-build firm that submits a response to the entity’s request for additional information a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be one-half of one percent of the contract amount and must be specified in the initial request for proposals. If the offer is accepted and paid, the governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.”).

¹¹⁶ Texas Government Code Section 2269.364(a).

¹¹⁷ Texas Government Code Section 2269.364(a).

¹¹⁸ Texas Government Code Section 2269.364(b) (“A violation of this section voids the contract for the project entered into by the governmental entity. The governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney’s fees as approved by the court.”).

¹¹⁹ Texas Government Code Section 2269.365-66.

¹²⁰ Texas Government Code Section 2269.367.

ii. Construction Manager-agent method (CMA)

The "construction manager-agent method" is a delivery method by which Harris County or Other Entities contract with a construction manager-agent (CMA) to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.¹²¹ A CMA represents the contracting entity in a fiduciary capacity as an agent.¹²² The contract with the CMA may require the CMA to provide administrative personnel, equipment necessary to perform duties under the proposal, on-site management, and other services specified in the contract.¹²³ A CMA may not: (i) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility; (ii) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or (iii) provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.¹²⁴ The architect or engineer on a project may not serve, alone or in combination with another person, as the CMA unless the architect or engineer is hired to serve as the CMA under a separate or concurrent selection process conducted in accordance with Texas Government Code Chapter 2269, Subchapter E.¹²⁵ When using the CMA method, the contracting entity shall procure a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the in accordance with applicable laws.¹²⁶ Harris County shall select a CMA on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected.¹²⁷ A CMA shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.¹²⁸

iii. Construction Manager-at-risk method (CMAR)

The "construction manager-at-risk method" is a delivery method by which Harris County or Other Entities contract with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk (CMAR) to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.¹²⁹ A CMAR assumes the risk for the project at the contracted price as a general contractor and provides consultation to the contracting entity regarding construction during and after the design of the project.¹³⁰ The contracted

¹²¹ Texas Government Code Section 2269.201.

¹²² Texas Government Code Section 2269.204.

¹²³ Texas Government Code Section 2269.202.

¹²⁴ Texas Government Code Section 2269.203.

¹²⁵ Texas Government Code Section 2269.205(b).

¹²⁶ Texas Government Code Section 2269.206.

¹²⁷ Texas Government Code Section 2269.207.

¹²⁸ Texas Government Code Section 2269.208.

¹²⁹ Texas Government Code Section 2269.251(a).

¹³⁰ Texas Government Code Section 2269.251(b).

price may be a guaranteed maximum price.¹³¹ The architect or engineer on a project or an entity related to the architect or engineer on the project may not serve, alone or in combination with another person, as the construction manager-at-risk.¹³²

The CMAR shall be selected in a one-step or two-step process.¹³³ The purchasing office shall prepare a single RFP, in the case of a one-step process, and an initial RFQ, in the case of a two-step process, that includes: (i) a statement as to whether the selection process is a one-step or two-step process; (ii) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and (iii) other information that may assist in selection of a CMAR.¹³⁴ The RFQ or RFP shall state the selection criteria.¹³⁵ In an RFP, proposed fees and prices may be requested as part of the proposal.¹³⁶ In the two-step process, price or fees may not be requested as part of the RFQ; however, five or fewer selected respondents to the RFQ may be requested to provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.¹³⁷ At each step, the county official shall publicly open, and read aloud the names of the respondents and the proposed fees and prices, if applicable to that step.¹³⁸ Not later than the 45th day after the date on which the final proposals are opened, the purchasing agent shall have the proposals evaluated and ranked in relation to the criteria set forth in the RFP.¹³⁹ The purchasing agent shall follow the same process as with a CSP for award of a contract by Commissioners Court and negotiation of a final contract until a contract with a CMAR is reached or negotiations with all ranked respondents end.¹⁴⁰

A CMAR shall publicly advertise for bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions, but may seek to perform portions of the work itself by submitting a bid or proposal and being chosen as the best value in the same manner as any other trade contractor or subcontractor.¹⁴¹ The CMAR shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by

¹³¹ Texas Government Code Section 2269.251(b).

¹³² Texas Government Code Section 2269.252(b).

¹³³ Texas Government Code Section 2269.253(a).

¹³⁴ Texas Government Code Section 2269.253(b).

¹³⁵ Texas Government Code Section 2269.253(c).

¹³⁶ Texas Government Code Section 2269.253(d).

¹³⁷ Texas Government Code Section 2269.253(e).

¹³⁸ Texas Government Code Section 2269.253(f).

¹³⁹ Texas Government Code Section 2269.253(g).

¹⁴⁰ Texas Government Code Section 2269.254.

¹⁴¹ Texas Government Code Section 2269.255.

the CMAR, architect, engineer, or the contracting entity.¹⁴² If the CMAR reviews, evaluates, and recommends a bid or proposal from a trade contractor or subcontractor but the Commissioners Court requires another bid or proposal to be accepted, the Harris County shall compensate the CMAR by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the CMAR incurs.¹⁴³ If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the CMAR may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor.¹⁴⁴

IV. 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. The Purchasing Office 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.¹⁴⁵ 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.¹⁴⁶

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. 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.

¹⁴² Texas Government Code Section 2269.256(a).

¹⁴³ Texas Government Code Section 2269.256(b).

¹⁴⁴ Texas Government Code Section 2269.257.

¹⁴⁵ See, ex. Texas Government Code Section 2252.032.

¹⁴⁶ 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).

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. Therefore, Harris County shall ensure a ceiling price is set for each such contract that the contractor exceeds at its own risk. 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.

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 entity and attached to all original contract documents. The County shall require review by its attorney prior to implementing the process. Further, after award of a contract but before the contract is made, the county official who makes purchases for the county may negotiate a modification of the contract if the modification is in the best interests of the county and does not substantially change the scope of the contract or cause the contract amount to exceed the next lowest bid.¹⁴⁷ For the modified contract to be effective, the Commissioners Court must approve the contract.¹⁴⁸

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.¹⁴⁹ 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.¹⁵⁰ The purchasing agent is authorized to approve change orders in an amount not to exceed \$50,000.¹⁵¹ 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.¹⁵² Additionally, the original contract price may not be decreased by 18 percent or more without the consent of the contractor.

C. CONTRACT COST AND PRICE

Harris County 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

¹⁴⁷ Tex. Local Government Code Section 262.0305(a).

¹⁴⁸ Tex. Local Government Code Section 262.0305(b).

¹⁴⁹ Texas Local Government Code Section 262.031.

¹⁵⁰ Texas Local Government Code Section 262.031.

¹⁵¹ Texas Local Government Code Section 262.031(b).

¹⁵² Texas Local Government Code Section 262.031(b).

be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

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.

Before issuing a solicitation, the Purchasing Office may recommend that Harris County develop an ICE for the products or services to be purchased. If the solicitation will 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 may recommend that Harris County perform a price or cost analysis in connection with its procurement actions to determine cost reasonableness.

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. Price analysis shall be used to verify that the overall price offered is fair and reasonable.

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.

D. PAYMENT

A purchase made by the purchasing agent shall be paid for by an electronic transfer, check, or warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. The county auditor may not draw and the county treasurer may not honor an electronic transfer, check, or warrant for a purchase unless the purchase is made by the purchasing agent or on competitive bid as provided by law.¹⁵³ The Purchasing Office shall ensure that procedures for use of purchasing cards do not avoid the competitive bidding requirements or other requirements of county financial law.¹⁵⁴ Payments by Harris County, including payments by vendors or subcontractors paid by Harris County, shall be made in compliance with Chapter 2251 of the Texas Government Code, also known as the Texas Prompt Payment Act. If a contract is approved by Commissioners Court or is for services that would require a person to register as a lobbyist under Chapter 305, then prior to any payments under

¹⁵³ Texas Local Government Code Section 262.011(f).

¹⁵⁴ Texas Local Government Code Section 262.011(o).

the contract, the vendor must file a Texas Form 1295.¹⁵⁵ The County reserves the right to withhold from payments up to 110 percent of the disputed amount.¹⁵⁶

E. RECORD RETENTION

The Purchasing Office shall abide by the Harris County Local Government Records Control Schedule which requires the retention of records for a minimum of five (5) years. If a local, federal, 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. All purchasing transactions shall be thoroughly documented and provide an audit trail, including but not limited to evaluation and ranking documents and justifications for a construction contract procured under Texas Government Code Chapter 2269.¹⁵⁷ Purchasing shall determine the location of official purchasing records, and shall maintain records in accordance with the requirements of the Texas Records Retention law under Texas Government Code Section 441.151 *et seq.*

F. 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.

G. 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,

¹⁵⁵ Texas Government Code Section 2252.908.

¹⁵⁶ Texas Government Code Section 2252.042(d).

¹⁵⁷ Texas Government Code Section 2269.060.

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)

The 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.¹⁵⁸ 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 Section 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 at www.htax.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. This policy is effective for all bids due on or after November 1, 2009.

H. PROTESTS.

Any vendor objecting to 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/Protest%20Policy%20Procedures%20-%20FINAL_6.9.2020.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, Harris County's 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.

¹⁵⁸ Initial rules adopted by Harris County pursuant to Texas Local Government Code Section 262.0276 effective May 1, 2004.

V. COUNTY INVENTORY MANAGEMENT

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 the County Inventory Management Policy, included as Attachment D.¹⁵⁹ Additionally, Purchasing Services oversees Harris County recycling program.

A. INVENTORY CONTROL

On July 1 of each year, the purchasing agent shall file with the county auditor and each of the members of the board that appoints the purchasing agent an inventory of all the property on hand and belonging to the county and each subdivision, officer, and employee of the county. The county auditor shall be responsible for verifying the inventory records maintained by the Purchasing Office, carefully examining the inventory, and accounting for all property purchased or previously inventoried and not appearing in the inventory.¹⁶⁰ When requested, Purchasing Services will assist any user department in conducting its inventory.

To prevent unnecessary purchases, the purchasing agent, with the approval of Commissioners Court, 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 or materials or the use of the equipment. The purchasing agent shall furnish to the county auditor a list of transferred supplies, materials, and equipment.¹⁶¹ Each individual user department is responsible for all items assigned to its department, regardless of value.

B. DISPOSAL OF COUNTY PROPERTY

The purchasing agent has been designated as the representative of Commissioners Court to dispose of County salvage or surplus property.¹⁶² Surplus items and salvage items, other than wastepaper, may be transferred to Purchasing Services for sale. All Capital County Assets, Controlled County Assets, and Discretionary County Assets must be submitted to Purchasing Services for Commissioners Court approval prior to removal from the inventory records and disposal.

VI. ATTACHMENTS

Attachment A – Harris County Minority- and Woman-Owned Business Enterprise Program Policy

Attachment B – Harris County Evaluation Committee Guidelines

Attachment C – Harris County Protest Policy & Procedures

Attachment D – Harris County Inventory Management Policy

¹⁵⁹ 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.

¹⁶⁰ Texas Local Government Code Section 262.011(i).

¹⁶¹ Texas Local Government Code Section 262.011(j).

¹⁶² Texas Local Government Code Section 263.154.

Attachment A

Harris County
Minority- and Woman-Owned Business Enterprise Program
Policy
10 November 2020

FINDINGS

Whereas, Harris County seeks to ensure competitive business opportunities for small, minority- and woman-owned business enterprises in the award and performance of County contracts, to prohibit discrimination on the basis of race, ethnicity, or sex in the award of, or participation in, County contracts, and to abolish barriers to full participation in County contracts by all persons, regardless of race, ethnicity or sex;

Whereas, the County is committed to equal opportunity for small, minority- and woman-owned businesses to participate in the award and performance of County contracts;

Whereas, the Supreme Court of the United States in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), has enunciated certain standards, often referred to as strict constitutional scrutiny, that are necessary to maintain effective contracting affirmative action programs in compliance with constitutional requirements;

Whereas, the County is committed to implementing its affirmative action program in conformance with the United States Supreme Court's decision in *Croson* and its progeny;

Whereas, Harris County awarded a Contract to perform a Disparity Study to meet the requirements of strict constitutional scrutiny from Colette Holt & Associates in 2018;

Whereas, the Disparity Study was designed to gather and analyze evidence relevant to whether Harris County has a strong basis in evidence of its compelling interest in using narrowly tailored measures to ameliorate identified discrimination;

Whereas, the Disparity Study found ample quantitative and qualitative evidence of the current effects of past and present discrimination against minority- and woman-owned business enterprises seeking to do business with Harris County as both Prime Contractors and Subcontractors;

Whereas, the Disparity Study recommended that Harris County employ race- and gender-neutral measures to remediate the identified discrimination;

Whereas, the Disparity Study recommended that Harris County employ narrowly tailored goals for the participation of minority- and woman-owned business enterprises in its contracting activities to further remediate the identified discrimination;

Whereas, the Disparity Study was completed and adopted by the Harris County Commissioners Court on June 30, 2020;

Now, therefore, Harris County adopts the following Minority- and Woman-owned Business Enterprise Program Policy.

SECTION I. Minority- and Woman-Owned Business Enterprise Program Established.

A Harris County Office of Economic Equity and Opportunity (OEEO or Office) and a Minority- and Woman-Owned Business Enterprise (M/WBE) Program are established by adoption of this Policy.

SECTION II. Definitions.

When used in this Policy, the following terms shall have the following meanings:

Annual Aspirational Goal means the County's overall, annual total target for the participation of MBEs and WBEs in County contracts.

Bid means a Bidder's response to a solicitation for Bids, proposals, or statements of qualifications for a project that is at least partially funded by the County of Harris but does not include federally-funded projects which have requirements that preempt the M/WBE Program.

Bidder means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, a limited liability company or any other entity which has submitted a bid on a County contract, regardless of the procurement method employed by the County or the type of goods or services sought.

Business, Business Concern or Business Enterprise means an entity organized for-profit with a place of business located in the United States.

Certified means an MBE or WBE that has been found to meet the requirements of this Policy and is certified by a government agency recognized by the County.

Commercially Useful Function means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities.

Compliance means that County departments and County Prime Contractors and Subcontractors have correctly implemented the requirements of this Policy.

Contract means a mutually-binding legal relationship, or any modification thereof (other than a lease of real property, payments to other government agencies, payments or reimbursements to County employees, procurement of utilities, collective bargaining

agreement, or not-for-profit contract), obligating the vendor to furnish services, and/or supplies to the County and the County to pay for them.

Contract Goal means the goal for the participation of MBEs and/or WBEs on a specific solicitation, which shall be based on the percentage availability of MBEs and/or WBEs to perform the specific weighted scopes of work of the entire contract, the County's utilization of MBEs and WBEs to date, the County's progress towards meeting the Annual Aspirational Goal, and other relevant factors.

Contractor means any person or business entity that shall enter into a Contract with the County and includes all partners and all joint venturers of such person.

County means Harris County, Texas.

Days means calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances where Harris County Government offices are closed for all or part of the last day, the period extends to the next day on which Harris County Government is open.

Director means the Director of the Office of Economic Equity and Opportunity or his or her designee.

Disadvantaged Business Enterprise or DBE means a for-profit small business concern as defined in the regulations governing the DBE program at 49 C.F.R. part 26, as amended.

Disparity Study means the report procured by the County and adopted by the County Commissioners, titled "Harris County Disparity Study 2020," conducted by Colette Holt & Associates.

Good Faith Efforts means efforts to achieve an MBE or WBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's requirements.

Goods means all physical materials, supplies, and equipment, excluding real property.

Joint Venture means an association of an MBE and/or WBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Minority means Black Americans, Hispanic Americans, Native Americans, Asian-Americans, or other Minorities as defined in the Disparity Study.

Minority Business Enterprise or MBE means a for-profit small business concern that is at least 51 percent owned by one or more individuals who are socially disadvantaged; whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals; which has a place of business located within the County's Marketplace; and which is Certified.

Office means the Harris County Office of Economic Equity and Opportunity created pursuant to this Policy and that is responsible for the OEEEO 3.

Office of the Purchasing Agent or Purchasing means the County department responsible to acquire appropriate goods and services essential to the operation of Harris County government and certain other governmental agencies in a timely and prudent manner, considering quality, value, and economy.

Owned means having all the customary incidents of ownership, including the right of disposition, and sharing in all risks and profits commensurate with the degree of ownership interest.

Prime Contractor means a Contractor that awarded a County contract and is at risk for the completion of an entire County project, including purchasing all materials, hiring and paying Subcontractors, and coordinating all the work.

Program means the Minority- and Woman-owned Business Enterprise Program established by this Policy.

Reconsideration Official shall mean a County representative that has not participated in the original determination that the Bidder did not make sufficient Good Faith Efforts to meet a Contract Goal.

Site of Work shall mean the physical place or places where the building or work called for in the contract will remain once the contract work has been completed and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

Subcontractor means a party that enters into a subcontract agreement with a Prime Contractor to perform work or provide materials on a County project.

USDOT-Assisted Contract shall mean any Contract between Harris County Government and a Prime Contractor funded in whole or in part with United States Department of Transportation financial assistance. Contracts funded by USDOT shall be subject to the Disadvantaged Business Enterprise program regulations at 49 C.F.R. Part 26, as amended.

User Department shall mean the department that develops the requisitions for Harris County.

Utilization Plan means the plan, in the form specified by the County, which must be submitted by a Bidder listing the MBEs and/or WBEs that the Bidder intends to use in the performance of a contract, the scopes of the work and the dollar values or the percentages of the work to be performed.

Woman-Owned Business Enterprise or WBE shall mean a for-profit small business concern that is at least 51 percent owned by one or more individuals who are women; whose management and daily business operations are controlled by one or more of the women; which has a place of business located within the County's Marketplace; and which is Certified as a WBE.

SECTION III. M/WBE Program Administration

A. Office of Economic Equity and Opportunity

The Office of Economic Equity and Opportunity shall have primary responsibility for the implementation and administration of the M/WBE Program and all other contracting diversity programs, including but not limited to, the Disadvantaged Business Enterprise Program promulgated at 49 C.F.R. Part 26, as amended. The Director of OEEO shall report directly to Commissioners Court.

OEEO shall formulate, propose and implement rules and regulations for the development, implementation, administration and monitoring of the Program. OEEO's duties shall include, but not be limited to:

1. Reviewing, monitoring, and ensuring compliance with the requirements of the Program, including developing rules, regulations, policies and procedures to implement the Program.
2. Developing and maintaining procedures to ensure that MBEs and WBEs are able to compete on all County contracts.
3. Reviewing Contract language with the County Counselor to develop appropriate Program language.
4. Reviewing and verifying the certification status of MBEs and/or WBEs and providing access to directories of MBEs and/or WBEs.
5. Reviewing Bids and solicitations to ensure that MBEs and WBEs have an equal opportunity to participate in County Contracts, including, but not limited to reviewing the scope of work, bonding requirements, insurance requirements, the conditions in which retainage is held, etc.

6. Reviewing requests for Bids, Proposals and other solicitation documentation, including the evaluation criteria, to ensure the inclusion of the Program requirements and remove artificial barriers to potential MBE or WBE participation.
7. Participating in pre-solicitation discussions, including any design review meetings, to consider such factors as MBE or WBE availability, bonding limits, and capabilities in the development of specifications.
8. Developing and implementing a narrowly tailored Contract Goal setting methodology.
9. In consultation with County User Departments, setting an MBE or WBE Contract Goal on all appropriate Contracts, including Contract modifications.
10. Attending pre-bid/proposal and pre-construction/design conferences to explain the Program and its requirements.
11. Evaluating a Prime Contractor's achievement of a Contract Goal or Good Faith Efforts to meet a Contract Goal.
12. Determining whether an MBE or a WBE is performing a Commercially Useful Function on a Contract.
13. Monitoring and reporting the progress of M/WBE and non-M/WBE participation in all procurements by County departments.
14. Working with User Departments to monitor Contracts to ensure prompt payments to MBEs and WBEs and compliance with applicable Contract Goals and commitments.
15. Monitoring and ensuring Program compliance in the Contract performance and closeout process, including conducting Site of Work inspections or other investigations, as needed.
16. Conducting semi-annual reviews of the progress of each agency, department, and the County's overall achievement of the Annual Aspirational MBE and WBE goals.
17. Developing, where appropriate. Program elements such as a small business element, a Mentor-Protégé Program or other narrowly tailored remedies.
18. Preparing and presenting periodic reports on compliance with the M/WBE Policy, any issues that need to be addressed and progress towards meeting the Annual Aspirational MBE and WBE goals.

19. Assessing and recommending periodically any process changes that may be necessary to improve the overall effectiveness of the Program.
20. Assisting all County departments and Prime Contractors and Subcontractors with the implementation and/or application of the Program.
21. Promoting and conducting outreach functions to the M/WBE community and other stakeholders.
22. Providing information and technical assistance to MBEs and WBEs relating to County Contracting practices and procedures, Bid specifications, requirements and prerequisites and other support to assist MBEs and WBEs to succeed in the overall marketplace to increase their ability to effectively compete for County Contracts.
23. Encouraging and promoting joint ventures, partnering and teaming arrangements between M/WBEs and non-M/WBEs and between two or more M/WBEs to enhance innovative approaches to increase M/WBE participation.
24. Promoting the Program and its reporting accomplishments toward the Annual Aspirational Goals.
25. Facilitating and supervising regularly scheduled training to County employees on the Program.
26. Managing the collection of data to facilitate a future disparity study.
27. Receiving, reviewing and acting upon complaints and suggestions concerning the Program.
28. Referring any information regarding possible false, fraudulent or dishonest conduct in connection with the Program to the appropriate authorities.
29. Administering the DBE program for USDOT-Assisted Contracts pursuant to 49 C.F.R. Part 26, where the County is either as a direct recipient of United States Department of Transportation funds or as a subrecipient through another entity. The Director of OEEEO shall serve as the DBE Liaison Officer pursuant to 49 C.F.R. Part 26, as amended.

B. Other County Department's M/WBE Program Roles and Responsibilities

Each County department that has or shares responsibility for the awarding or monitoring of County Contracts is responsible for promoting, supporting, and assisting in carrying out the Program. Such departments are to be held accountable for exercising specific functions in support of the Program, as well as any other function(s) deemed necessary

by OEE0 to implement the goals and objectives of the Program. To reduce barriers to MBE's and WBE's participation on County procurements, all departments requesting Bids, proposals or any other solicitation on behalf of the County shall:

1. Designate a procurement officer or designee, or multiple officers or designees, who shall be the point of contact for monitoring and reporting M/WBE compliance to OEE0.
2. Notify and provide OEE0 upon departmental knowledge of an anticipated solicitation the necessary information to determine whether a Contract Goal should be set, including but not limited to, the scope of work, experience and insurance requirements, budget, schedule, Bid specifications and any other relevant information no later than ten business days prior to the procurement announcement.
3. Evaluate anticipated solicitations to unbundle items or services to permit offers on quantities or scopes of work less than the total requirement or the performance of discreet portions of the project where feasible
5. At least ten business days before a solicitation will be advertised, forward a copy of the advertisement to OEE0 to ensure appropriate Program language has been included.
6. Ensure that all applicable provisions of the Program are included in Bid specifications/proposals and Contracts.
7. Assist OEE0 in identifying potential MBEs and WBEs for participation in particular Contracts.
8. Assist in the development, monitoring and implementation of M/WBE Contract Goals and commitments.
9. Manage Contracts in a consistent manner to assure compliance with the Program.
10. Assist in the compilation of Contract data for M/WBE availability and utilization.
11. Provide OEE0 with a copy of, or independent access electronically to, the necessary information for each Contract including, but not limited to, the Contract value, pre-bid/pre-proposal sign in sheets, the bid or proposal results, any Contract modifications, the MBE and/or WBE Contract Goal commitment and the Contracting parties' signatures confirming an executed agreement with the County.

12. Notify no later than five business days prior to any key post-award Contract meetings or issues that could affect the Prime Contractor's ability to achieve the M/WBE commitment, such as Contract kickoff meetings, monthly meetings or meetings to address Contract performance issues affecting M/WBE commitments.

13. Require that each Prime Contractor submit as part of its pay request process, the required Program information in the format required by the County to ensure an accurate accounting of M/WBE participation.

14. Assist and support OEEEO by ensuring that the Prime Contractor provide all necessary documents and information to close out the Contract that provide a final accounting for MBE, WBE and all Subcontractor participation on the Contract.

15. Assist and participate in workshops, trade fairs, outreach seminars, etc., to identify and increase the participation of MBEs and WBEs on projects.

16. Advertise the County's Contract opportunities via the County's website, and other avenues in consultation with OEEEO if appropriate, to maximize MBE and WBE participation.

17. Develop and advertise forecasts of upcoming procurement opportunities, including on an annual basis.

SECTION IV: Race- and Gender-Neutral Measures to Ensure Equal Opportunities for All Contractors and Subcontractors

A. The County shall develop and use race- and gender-neutral measures to the maximum feasible extent in implementing the Program. These measures may include, but are not limited to:

1. Establishing schedules for submitting Bids with adequate time frames for identifying and contacting MBEs and WBEs qualified to participate in the procurement.

2. Arranging solicitation times for the presentations of bids, specifications, and delivery schedules to facilitate the participation of interested Prime Contractors and Subcontractors.

3. Segmenting procurements to facilitate the participation of MBEs, WBEs and other small businesses.

4. Providing timely information on Contracting procedures, Bid preparation and specific Contracting opportunities, including through an electronic system and social media.

5. Assisting MBEs, WBEs and other small businesses with training seminars on the technical aspects of preparing a bid for a County contract.
6. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing, and support for business development such as accounting, bid estimation, safety requirements, and quality control, etc.
7. Advertising solicitations within a sufficient period of time to allow M/WBEs to submit Bids and non-Certified Bidders to solicit quotes from MBE and WBE Subcontractors.
8. Holding pre-Bid and pre-Proposal conferences, where appropriate, to explain the projects and to encourage Prime Contractors to use available qualified MBEs and WBEs.
9. Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the County.
10. Authorizing, where appropriate, mobilization payments to Prime Contractors and ensuring that Subcontractors receive their proportionate share of mobilization funds.
11. Adopting prompt payment procedures, including requiring by contract, that Prime Contractors promptly pay Subcontractors and investigating complaints or charges of excessive delay in payments.
12. Enforcing statutory and contractual prompt payment provisions, including the right to pay Subcontractors directly.
13. At the discretion of OEEEO, in cooperation with Purchasing, periodically entering into a procurement process without Contract Goals in order to determine MBE and WBE utilization in the absence of such Goals.
14. Collecting information from all Prime Contractors on County construction contracts detailing the bids received from all Subcontractors for County construction contracts and the expenditures to Subcontractors utilized by Prime Contractors on County construction contracts.
15. Referring complaints of discrimination against MBEs or WBEs to the appropriate authority for investigation.

B. The Director will work with Purchasing and User Departments to adopt additional measures, as warranted.

SECTION V: Annual Aspirational Goal

The 2020 Disparity Study provided percentage estimates of the availability of MBEs and WBEs as a portion of all available firms to provide goods and services to the County. The Disparity Study also provided statistical information about disparities between the availability of MBE and WBEs and their utilization on County contracts. Based on these findings, the County adopts an overall, Annual Aspirational Goals for MBE and WBE participation on County contracts of thirty percent of total spending.

SECTION VI: Race- and Gender-Conscious Measures to Implement the Program

A. Program eligibility

To be eligible to be counted as an MBE or a WBE towards a Contract goal, the firm must be certified at the time of Bid submission by a government agency recognized by the County as meeting the requirements of strict constitutional scrutiny. The County shall make a list of such agencies readily available on its website and other means.

B. Contract Goals

The Director, in consultation with Purchasing and the User Department, shall establish a Contract Goal on each eligible Contract, based upon the percentage availability of at least three Certified MBEs and three Certified WBEs to perform the anticipated scopes of work of the entire contract, the County's utilization of MBEs and WBEs to date, the County's progress towards meeting the Annual Aspirational Goal, and other relevant factors.

C. Counting MBE and WBE Participation Towards Contract Goals

A Bidder may achieve the Contract Goals by its status as an MBE or WBE; by entering into a Joint Venture with one or more MBEs and/or WBEs; by subcontracting at any tier a portion of the work to one or more MBEs and/or WBEs; by direct purchase of materials or services from one or more MBEs and/or WBEs or by any combination of the above.

When an MBE or WBE participates in a Contract, the County will count only the value of the work actually performed by the MBE or WBE toward Contract Goal.

The participation of MBEs and/or WBEs will be counted as follows towards the Contract Goal:

1. The Bidder may count the entire amount of that portion of the Contract that is performed by the MBE's or WBE's own forces, including the cost of supplies and materials obtained by the MBE or WBE for the work of the contract, such as supplies purchased, or equipment leased by the MBE or WBE. Supplies and equipment the

MBE or WBE Subcontractor purchases or leases from the Prime Contractor or its affiliate does not count towards the Contract Goal.

2. The Bidder that is an MBE or a WBE may count the entire amount of the Prime Contractor's self-performance that the MBE or WBE is performing with its own forces.

3. The Bidder may count the entire amount of fees or commissions charged by an MBE or WBE for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a Contract, provided the County determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. When an MBE or WBE Subcontracts part of the work of its Contract to another firm, the value of the Subcontracted work may be counted only if the MBE or WBE's Subcontractor is itself an MBE or a WBE. Work that an MBE or WBE Subcontracts to a non-certified firm does not count towards the Contract Goal.

5. When an MBE or WBE performs as a participant in a Joint Venture, the Joint Venture Bidder may count only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces. The MBE or WBE participant in the Joint Venture must be responsible for a clearly defined portion of the work to be performed equal to its share in the ownership, control, management responsibility, risks and profits of the Joint Venture. The Director shall review the profits and losses, initial capital investment, actual participation of the MBE or WBE Joint Venture partner in the performance of the contract with its own forces and for which it is separately at risk, and other pertinent factors of the Joint Venture. The Joint Venture agreement must be approved by the Director and it is required to operate in accordance with the approved Joint Venture agreement.

6. The Bidder may count the entire amount of expenditures with MBEs or WBEs for materials or supplies, provided the MBE or WBE is responsible for ordering and paying for the materials and supplies in full, using its own credit and accepting all the risks of the purchase.

The dollar value of work performed under a Contract with a certified firm after it has ceased to be certified can count toward the Contract Goal if the Bidder's Contract with the County was executed prior to removal of the firm's certification.

MBE or WBE Subcontractor participation only counts toward a Prime Contractor's compliance with its Utilization Plan when the amount being counted has actually been paid to the MBE or WBE.

Only expenditures to an MBE or WBE that is performing a Commercially Useful Function shall be counted towards the Contract Goal. To perform a Commercially Useful Function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price (if applicable), determining quality and quantity (if applicable), ordering the material, and installing and paying for the material itself. To determine whether an MBE or WBE is performing a Commercially Useful Function, the County will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the MBE or WBE credit claimed for its performance of the work, and other relevant factors.

An MBE or WBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, the County will examine similar transactions, particularly those in which MBEs or WBEs do not participate. The Prime Contractor is responsible for ensuring that the firm is performing a commercially useful function. If the MBE or WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the County will presume that it is not performing a Commercially Useful Function.

The County shall use the following factors in determining whether an MBE or WBE trucking company is performing a Commercially Useful Function:

1. The MBE or WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting Contract Goals.
2. The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
3. The MBE or WBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The MBE or WBE may lease trucks from another MBE or WBE, including an owner-operator who is certified as an MBE or WBE. The MBE or WBE who leases trucks from another MBE or WBE receives credit for the total value of the transportation services the lessee MBE or WBE provides on the contract.
5. The MBE or WBE may also lease trucks from a non-certified firm, including from an owner-operator. The MBE or WBE that leases trucks equipped with drivers from a non-certified firm is entitled to credit for the total value of transportation services provided by non-certified firm's leased trucks equipped with drivers that do not

exceed the value of transportation services on the contract provided by MBE- or WBE-owned trucks or leased trucks with MBE or WBE employee drivers. Additional participation by non-certified firm owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to paragraph 5: MBE or WBE X uses two of its own trucks on a contract. It leases two trucks from MBE or WBE Y and six trucks equipped with drivers from non-certified Firm Z. Contract Goal credit would be counted for the total value of transportation services provided by Firm X and Firm Y, and may also be counted for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. Contract Goal credit could be counted only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

6. The MBE or WBE may lease trucks without drivers from a non-certified firm's truck leasing company. If the MBE or WBE leases trucks from a non-certified firm's truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph 6: MBE or WBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-certified firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. Contract Goal credit would be counted for the total value of the transportation services provided by all four trucks.

7. For purposes of paragraph 6, a lease must indicate that the MBE or WBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MBE or WBE, so long as the lease gives the MBE or WBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE or WBE.

When an MBE or WBE is presumed not to be performing a Commercially Useful Function, the MBE or WBE may present evidence to rebut this presumption. OEEEO's determination that an MBE or WBE is not performing a Commercially Useful Function is not appealable and shall be final.

D. Utilization Plan Submissions

Compliance documents must be submitted as provided in the solicitation. Failure to do so will render the bid non-responsive. The Director shall review each bid submission to determine if it meets the Program and Solicitation requirements.

A Bidder must either meet the Contract Goal or establish its Good Faith Efforts to do so. Failure to do either will render the Bid non-responsive and it will be rejected by the County.

Each Bidder shall submit with its bid a completed and signed Utilization Plan that lists the names, addresses, telephone numbers, email addresses, a description of the work and contact person of the businesses intended to be used as Subcontractors, including those firms proposed to meet the Contract Goal; the type of work or service each Subcontractor will perform; and the dollar amount to be allocated to each Subcontractor. Each Bidder's Utilization Plan shall commit to meeting or exceeding the Contract Goal set forth in the solicitation or demonstrate its Good Faith Efforts to do so.

Provided that, in a negotiated procurement including a design-build procurement, the Bidder may make a Contractually binding commitment to meet the Contract Goal at the time of Bid submission or the presentation of initial proposals but provide the information required before the final selection for the Contract is made by the County.

Each Bidder must submit, at the time specified in the solicitation, a signed MBE and/or WBE Subcontractor's Letter of Intent for each firm specified in the solicitation, with a copy of each MBE's and/or WBE's current Letter of Certification from a state or local government or agency recognized by the County.

A Bidder may request a partial or total reduction of the Contract Goal, in the manner and form specified in the solicitation, based on its Good Faith Efforts to meet the Contract Goal. All information must be complete, accurate and adequately document the Bidder's Good Faith Efforts before the County commits to the performance of the Contract by the Bidder. The documentation of Good Faith Efforts must include copies of each MBE or WBE and non-Certified Subcontractor quote submitted to the Bidder when a non-Certified Subcontractor was selected over an MBE or a WBE for work on the Contract.

To determine whether a Bidder has made Good Faith Efforts, OEEEO will consider whether the Bidder:

1. Attended any pre-bid conference conducted by the County to acquaint Prime Contractors with MBEs and WBEs available to provide relevant goods and services and to inform MBEs and WBEs of subcontract opportunities on the Contract.
2. Solicited through reasonable and available means (e.g., written notices, advertisements) MBEs and WBEs certified in the anticipated scopes of Subcontracting of the Contract, not less than 15 calendar days before the Bid is due.
3. Provided timely and adequate information about the plans, specifications and requirements of the Contract. Followed up initial solicitations to answer questions and encourage MBEs and WBEs to submit Bids.

4. Negotiated in good faith with interested MBEs and WBEs that have submitted Bids and thoroughly investigated their capabilities. Evidence of such negotiations includes the names, email addresses and telephone numbers of MBEs and WBEs with whom the Bidder negotiated; a description of the information provided to MBEs and WBEs regarding the work selected for Subcontracting; and explanations as to why agreements could not be reached with MBEs and/or WBEs to perform the work. The Bidder may not reject MBEs and WBEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself a sufficient reason for a Bidder's failure to meet the Contract Goal, as long as such costs are reasonable.
5. Selected those portions of the contract consistent with the available MBEs and WBEs, including where appropriate, breaking out Contract work items into economically feasible units to facilitate MBE and WBE participation even when the Bidder would prefer to perform those scopes with its own forces.
6. Made efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the County or the Bidder for performance of the Contract (if applicable).
7. Effectively used the services of OEEEO; MBE and WBE assistance groups; local, state, and federal minority or woman business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs and WBEs.

In determining whether a Bidder has made Good Faith Efforts, the levels of participation by MBEs and WBEs set forth in Utilization Plans submitted by other Bidders for the same procurement may be considered. For example, if the apparent successful Bidder fails to meet the Contract Goal(s) but meets or exceeds the average MBE or WBE participation obtained by other Bidders, this may be evidence that the apparent successful Bidder made Good Faith Efforts.

If the County determines that the apparent successful Bidder has failed to meet the Good Faith Efforts requirements of the Program the County must, before awarding the Contract, provide the Bidder an opportunity for administrative reconsideration. A Bidder's request for reconsideration must be to the County within ten business days of the Bidder's receipt of the County's determination that it did not make adequate Good Faith Efforts to meet the Contract Goal. As part of this reconsideration, the Bidder must have the opportunity to provide written documentation or argument concerning the issue of whether it met the Contract Goal or made adequate Good Faith Efforts to do so. The County's decision on reconsideration must be made by an official who did not take part in the original determination that the Bidder failed to meet the Contract Goal or make adequate Good Faith Efforts to do so. The Bidder must have the opportunity to meet in person with the County's reconsideration official to discuss the issue of whether it met the Contract Goal or made adequate Good Faith Efforts to do so. The County must

send the Bidder a written decision on reconsideration with 15 business days, explaining the basis for finding that the Bidder did or did not meet the Contract Goal or make adequate Good Faith Efforts to do so. The result of the reconsideration process is not administratively appealable.

The Prime Contractor shall make available to OEEEO upon request a copy of all Subcontracts. All Subcontractors, regardless of their Subcontracting tier, shall adhere to the provisions of the Program.

E. Contract Performance Compliance

The Prime Contractor shall be required to submit a status report of its progress towards meeting the Contract Goal, or other Program requirements, in the form and at the time specified in the Solicitation or as otherwise directed by the County. The Prime Contractor's failure to do so may result in a delay of the progress payment

Evidence of MBE and WBE subcontractor participation and payments must be submitted as required by the County to confirm Subcontractors' participation and payment.

County contract compliance officers and auditors, or their designees, shall have access to the Contractor's and Subcontractor's books and records, including certified payroll records, bank statements, employer business tax returns and all records including all computer records and books of account to determine the Prime Contractor's and MBE or WBE Subcontractor's compliance with the Goal commitment. Audits may be conducted at any time and without notice in the total discretion of the County. A Prime Contractor must provide the Director any additional compliance documentation within ten business days of such request. Audits may be conducted without notice at any time at the discretion of the County.

If County personnel observe that any purported MBE, or WBE Subcontractor other than those listed on the Utilization Plan are performing work or providing materials and/or equipment for those MBE and WBE Subcontractors listed on the Utilization Plan, the Prime Contractor will be notified in writing that an apparent violation is taking place and progress payments may be withheld. The Prime Contractor will be given an opportunity to meet with the Director prior to a finding of noncompliance.

The Contract Goal obligation extends to all Contract work covered by change orders, irrespective of the Contracting tier. The obligation to make Good Faith Efforts to meet the Contract Goal extends to the entire performance of the Contract. When Contract work is added, the Prime Contractor must award that work to the MBE or WBE listed in its Utilization Plan, if the original scope of work is to be performed an MBE or WBE listed in the Utilization Plan. If the original listed MBE or WBE cannot perform the additional work, the Prime Contractor must make Good Faith Efforts to secure MBE or WBE Subcontractors to perform the additional Contract work so that the Goal percentage committed to in the Contract is maintained or the Contract Goal is achieved.

When a scope of Contract work is deducted, the Prime Contractor must make Good Faith Efforts to achieve the Contract Goal percentages committed to in the Contract.

The Prime Contractor is required to fill out the Supplemental Change Order Form or such other documents as the County may require which details the names of the Subcontractors impacted and provides a description of the work and dollar amount of the change and the amended Contract value. The Prime Contractor will submit the Supplemental Change Order Form along with any additional documents as required to OEE0 for approval.

After Contract award, a Prime Contractor cannot make any changes to the approved Utilization Plan or substitute or terminate an MBE or WBE Subcontractor listed in its approved Utilization Plan without prior written consent of OEE0. This includes, but is not limited to, instances in which a Prime Contractor seeks to perform work originally designated for an MBE or WBE Subcontractor with its own forces or those of an affiliate, a non-M/WBE or another MBE or WBE. The County will include in each Contract a provision stating that the Prime Contractor shall utilize the specific MBE(s) and WBE(s) listed in the approved Utilization Plan to perform the work and supply the materials for which each is listed, unless the Prime Contractor obtains OEE0's written consent. The Prime Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the approved MBE or WBE.

The County may provide such written consent only if the County agrees that the Prime Contractor has good cause to terminate the MBE or WBE. Good cause includes the following circumstances:

1. The listed MBE or WBE Subcontractor fails or refuses to execute a written Subcontract.
2. The listed MBE or WBE Subcontractor fails or refuses to perform the work of its Subcontract in a way consistent with normal industry standards. Good cause does not exist, however, if the failure or refusal of the MBE or WBE Subcontractor to perform its work on the Subcontract results from the bad faith or discriminatory action of the Prime Contractor.
3. The listed MBE or WBE Subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
4. The listed MBE or WBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. The listed MBE or WBE Subcontractor is ineligible to work on Contracts because of suspension and debarment or applicable federal or state law.

6. The County has determined that the listed MBE or WBE Subcontractor is not a responsible Subcontractor.
7. The listed MBE or WBE Subcontractor voluntarily withdraws from the project and provides written notice to OEEEO of its withdrawal.
8. The listed MBE or WBE Subcontractor is ineligible to receive M/WBE credit for the type of work required.
9. MBE or WBE owner dies or becomes disabled with the result that the listed MBE or WBE Subcontractor is unable to complete its work on the contract.
10. Other documented good cause that OEEEO determine compels the termination of the MBE or WBE Subcontractor.

Good cause does not include where the Prime Contractor seeks to terminate a listed MBE or WBE Subcontractor so that the Prime Contractor can self-perform the work for which the MBE or WBE Subcontractor was engaged or so that the Prime Contractor can substitute another MBE or WBE or non-certified Subcontractor after Bid submission.

Before requesting to terminate and/or substitute a MBE or WBE Subcontractor, the Prime Contractor must give notice in writing to the MBE or WBE Subcontractor, with a copy to OEEEO, of its intent to request to terminate, replace and/or substitute, and the reason for the request. The Prime Contractor must give the MBE or WBE five business days to respond to the notice and advise the County and the Prime Contractor of the reasons, if any, why the MBE or WBE objects to the proposed termination and why OEEEO should not approve the request. If required in a particular case as a matter of public necessity (*e.g.*, safety), OEEEO may require a response period shorter than five business days.

When an MBE or WBE Subcontractor is terminated or fails to complete its work on the Contract for any reason, the Prime Contractor must make Good Faith Efforts to substitute another MBE or WBE for the original MBE or WBE. These Good Faith Efforts shall be directed at substituting another MBE or WBE to perform at least the same amount of work under the Contract as the MBE or WBE that was terminated, to the extent needed to meet the Contract Goal. The Prime Contractor must submit an MBE or WBE Subcontractor's Letter of Intent for each proposed new MBE or WBE subcontractor. If the Prime Contractor is not successful in substituting another MBE or WBE, then its documented Good Faith Efforts to do so must be submitted within 14 calendar days of the approved substitution. OEEEO shall provide a written determination to the Prime Contractor stating whether or not Good Faith Efforts have been demonstrated.

In the event a Prime Contractor, in the performance of its Contract, determines that the conditions of the work warrant a reduction in the scope of work to be performed by an MBE or WBE, the Prime Contractor must utilize Good Faith Efforts to fulfill its

contractual Goal commitment. The Prime Contractor must notify the Director in writing within 14 calendar days of the determination to request an amendment of its Utilization Plan. The Prime Contractor must give the MBE or WBE Subcontractor notice in writing, with a copy to the Director, of its intent to request to reduce the scope of work and the detailed reasons for the request. The Director will approve or disapprove the reduction based on the Prime Contractor's documented compliance with these provisions.

SECTION 8: Enforcement and Sanctions for Non-Compliance

The County shall insert into each Contract a clause stating that the failure by the Prime Contractor to carry out the requirements of the Program is a material breach of the Contract and may result in the termination of the Contract or such other remedies as the County deems appropriate, including but not limited to denying or limiting credit towards the Contract Goal, withholding progress payments, termination of the Contract, liquidated damages, debarment from future County Contract opportunities or other appropriate remedies.

Any MBE or WBE that has misrepresented its MBE or WBE status and/or failed to operate as an independent business concern performing a Commercially Useful Function, shall be declared by the Director to be ineligible to participate as an MBE or WBE in County contracts. A firm that has been declared ineligible may not participate as an MBE or WBE for a period of not less than one year and not more than three years.

Any sanctions imposed against an entity shall also apply personally to all officers and directors of the entity or partners of the entity, and their successors and assigns with knowledge of the acts and omissions that give rise to the sanctions against the entity.

The County may refer any matters to the appropriate law enforcement agencies for follow-up action.

SECTION 9: Other Federal Regulations

The provisions of this Policy shall not apply to any contract to the extent that different procedures or standards are required by any law or regulation of the United States.

SECTION 10: Effective Date

This Policy shall be effective and apply to all Bids for Contracts advertised after [date].

SECTION 10: Sunset Provision

The Program shall sunset five years from adoption of this Policy, unless otherwise reenacted. The County shall regularly review the operations and achievements of the Program. The County shall perform a disparity study prior to the sunset date.

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.



Harris County

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



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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



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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).



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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, 12th 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.



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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. 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, 12th 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.



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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



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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 1st 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



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Inventory Completion Statement (County Auditor's Form 3368) later than May 1st 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> ww.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



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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.