



FEDERAL PROCUREMENT POLICY OF BURNET COUNTY

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I. BACKGROUND

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

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

1. 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
2. 24 C.F.R. Part 570 – Community Development Block Grants
3. Texas Local Government Code Section 262 – Purchasing and Contracting Authority of Counties in Texas
4. Texas Local Government Code Section 271 – Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments
5. Texas Government Code Section 2269 – Contracting and Delivery Procedures for Construction Projects
6. Burnet County Purchasing Rules and Procedures Manual
7. Burnet County Statement of Ethics
8. 24 C.F.R. Part 135 – Economic Opportunities for Low- and Very Low-Income Persons, which implements Section 3 of the Housing and Urban Development Act of 1968
9. Texas Health & Safety Code Section 361.426 – Governmental Entity Preference for Recycled Products

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

II. OVERVIEW

The standards provided in this Policy are basic principles that Burnet County, as well as its subrecipients, shall adhere to when contracting for needed items using Federal program grant funds. Burnet County shall use its own documented procurement policies and procedures which reflect applicable State, local, and tribal laws and regulations, and which conform to applicable Federal law

and standards.¹ Pursuant to 24 C.F.R. 570.502, if a grantee's policy does not contain all federal requirements, and the grantee intends to use federal funds to pay for such services, the policy must be amended in accordance with 2 C.F.R. 200. Thus, Burnet County has developed this Federal Procurement Policy to include all federal requirements contained in 2 C.F.R. 200.

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

III. MISSION STATEMENT

The mission of the Burnet County Purchasing Office is to acquire appropriate goods and services essential to the operation of Burnet 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.

IV. APPLICABILITY

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

V. CODE OF CONDUCT

Burnet County operates its business ethically and in compliance with the law. Employees of Burnet County, or vendors doing business with Burnet County, who believe he or she has witnessed any suspected ethical violation or fraud should immediately report the allegations to the County Auditor. 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.

A. ETHICS POLICY

¹ 2 C.F.R. 200.318(a)

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”, 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 ethics. In accordance with State law and County purchasing requirements, County purchasing personnel and other employees involved in the purchasing process shall adhere to the following ethical standards.

Employees may not:

- 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.

B. CONFLICT OF INTEREST

Burnet 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).

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 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 Burnet County employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any

member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of a grantee or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Burnet 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.² 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 Burnet County:

1. No employee, officer, agent of Burnet 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:
2. 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;
3. Employees, officials, and/or agents of Burnet 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;
4. Employees, officers and agents of Burnet County shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements; and
5. 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, Burnet County shall impose penalties, sanctions or other disciplinary actions to any employees, officers, or agents of the Burnet County for violations of these standards.

Any parent, affiliate, or subsidiary organization of Burnet 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 a grantee or

² 2 CFR 200.318(c)(1)

subrecipient being unable or appearing unable to be impartial in conducting a procurement action involving a related organization.³

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.

C. PUBLIC INFORMATION REQUESTS

Burnet County is subject to the Texas Public Information Act, Section 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, Burnet County must rely on advice, decisions and opinions of the Attorney General of the State of Texas relative to the disclosure of data or information.

No Federal awarding agency may place restrictions on Burnet County that limits public access to the records of Burnet County pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under Burnet County's control except as required under 2 C.F.R. 200.315 Intangible property. Burnet County's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.⁴

VI. STATEMENT OF PURPOSE

The purpose of this Policy is to:

³ 2 CFR 200.318(c)(2)

⁴ 2 C.F.R. 200.337

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

VII. AUTHORITY

As with its local funds, the Burnet County Office of the Purchasing Agent shall direct the procurement activities of the County as required by applicable statutes and shall serve as the entity responsible for procuring all goods and services for the County for any federally-funded expenditures. The primary function of the Burnet 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 Burnet County Purchasing Agent is designated as the Burnet 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 the County (or a subdivision, officer, or employee of the County). Only the Purchasing Agent may make the purchase of supplies, materials, or equipment or make a contract for repairs.⁵ 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.⁶ Violation of these laws by any County official or employee carries criminal penalties.⁷

VIII. BURNET COUNTY FEDERAL PROCUREMENT MANUAL

The Burnet County federal procurement manual and procedures shall reflect applicable

⁵ Texas Local Government Code Section 262.011(d)

⁶ Texas Local Government Code Section 262.011(e)

⁷ Texas Local Government Code Section 262.011(m)

State and local law and conform to applicable Federal standards as described in 2 C.F.R. 200.317-326 as amended. The Manual and any attachments thereto constitute the method of implementation of this Policy.

IX. GENERAL PROVISIONS

Burnet County is responsible for complying with all requirements of federal funding received. Burnet County shall manage and administer the federal funding to ensure it is expended in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination.⁸

A. CONTRACTOR OVERSIGHT

Burnet County shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.⁹

B. AVOIDING DUPLICATIVE OR UNNECESSARY PURCHASES

The County 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.¹⁰

The Purchasing Agent shall be responsible for reviewing and monitoring all procurement methods to ensure the most economical and efficient use of federal funds. The Purchasing Agent shall also maintain an inventory of County property and transfer surplus County property between County departments as required.¹¹

C. PROCUREMENT PLANNING

The County shall also consider the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.¹²

D. INTERLOCAL AGREEMENTS

To foster greater economy and efficiency and in accordance with efforts to promote cost-effective use of shared services across the federal government, Burnet County 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,¹³ provided the following conditions are met:

⁸ 2 C.F.R. 200.300(a)

⁹ 2 C.F.R. 200.318(b)

¹⁰ 2 C.F.R. 200.318(d)

¹¹ Texas Local Government Code Section 262.011(i)(j)

¹² 2 C.F.R. 200.318(f)

¹³ 2 C.F.R. 200.318(e)

- i. The agreement provides for greater economy and efficiency and results in cost savings. Before utilizing an interagency agreement for procurement, the County shall compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;
- ii. The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for the 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 the County, are provided by the State or a locality and are part of that government's normal duties and responsibilities, it is permissible for the County to share the services and cost of staff under an agreement;
- iii. The County shall take steps to ensure that any supplies or services obtained using another agency's contract were purchased in compliance with 2 C.F.R. 200;
- iv. 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
- v. The agreement shall be between the 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 the County's interests are protected. After entering into an agreement, the County shall compare cost and availability annually to determine if the terms of the agreement continue to pass the tests of economy and efficiency.

E. VALUE ENGINEERING

Burnet County shall determine which procurement method provides the best value for the County.¹⁴ The County shall also use value engineering methods for construction projects of sufficient size to offer reasonable opportunities for cost reductions.¹⁵

The practice of value engineering includes a certain amount of expense which must be justified by potential cost savings. Accordingly, the County shall justify the need for value engineering and

¹⁴ Texas Government Code Section 2269.056

¹⁵ 2 C.F.R. 200.318(g)

must be able to demonstrate that there is a distinct opportunity for financial benefit to warrant the added cost of a value engineering effort.

F. RESPONSIBILITY

Burnet County 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.¹⁶

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

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Have the necessary organization, experience, and operational controls, and technical skills, or the ability to obtain them;
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics; and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended or debarred.

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

G. RECORDKEEPING

Harris County shall maintain records sufficient to detail the history of each procurement action.¹⁷

These records shall include, but are not limited to, the following:

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

¹⁶ 2 C.F.R. 200.318(h)

¹⁷ 2 C.F.R. 200.318(i)

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

H. ACCESS TO RECORDS

Burnet County shall comply with requirements allowing access to records, which require that the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, have the right of access to any documents, papers, or other records of Burnet County which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts.¹⁸ The right also includes timely and reasonable access to Burnet County's personnel for the purpose of interview and discussion related to such documents.¹⁹

Burnet County shall make available, upon request of the Federal awarding agency or pass-through entity, the technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.²⁰ Additionally, Burnet County shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- The County's procurement procedures or operation fails to comply with the procurement standards defined in 2 C.F.R. 200;²¹
- The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;²²
- The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;²³
- The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;²⁴ or
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.²⁵

All contracts awarded by Burnet County shall include a provision to the effect that Burnet County, the Federal awarding agency, Inspectors General, the Comptroller General of the United States,

¹⁸ 2 C.F.R. 200.336

¹⁹ 2 C.F.R. 200.336(a)

²⁰ 2 C.F.R. 200.324(a)

²¹ 2 C.F.R. 200.324(b)(1)

²² 2 C.F.R. 200.324(b)(2)

²³ 2 C.F.R. 200.324(b)(3)

²⁴ 2 C.F.R. 200.324(b)(4)

²⁵ 2 C.F.R. 200.324(b)(5)

and the pass-through entity, or any of their authorized representatives, have the right of access to any documents, papers, or other records of contractors which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. Burnet County shall require contractors to maintain all required records for five (5) years from the date of execution of the closeout agreement for a grant.

I. CONTRACT TYPES

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

IMPORTANT NOTE: Federal code prohibits cost plus a percentage of cost (CPPC) or a percentage of construction cost.²⁶ Therefore, Burnet County contracts shall not use cost plus percentage of cost or percentage of construction cost contract methods, and its contracts shall not contain any cost plus percentage of cost or percentage of construction cost provisions.

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

6. 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 the 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

²⁶ 2 C.F.R. 200.323(d)

- 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.

7. 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. Burnet County shall use cost-reimbursement contracts only when:

- Circumstances do not allow the 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.

8. Time & Materials

Burnet County may use time and material type contracts only after a determination that no other contract is suitable.²⁷ Therefore, Burnet County shall ensure a ceiling price is set for each such contract that the contractor exceeds at its own risk. Burnet 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.²⁸

9. 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 Burnet County and the contracting party and attached to all original contract documents. The County shall require review by its attorney prior to implementing the process.

²⁷ 2 C.F.R. 200.318(j)(1)

²⁸ 2 C.F.R. 200.318(j)(2)

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.²⁹ 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.³⁰ 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.³¹ Additionally, the original contract price may not be decreased by 18 percent or more without the consent of the contractor.

J. DISPUTES

Burnet 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 Burnet County of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of Burnet County unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.³²

Any vendor objecting to an award recommendation should first contact the Purchasing Office and, if necessary, appear at Commissioners Court, or to the appropriate governing body, on the scheduled award day. In order for a Protest to be considered properly, the Protestor shall adhere to County's protest procedure by providing a written submission 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 contract number identified in the Letter of Invitation;
- The specific staff recommendation, County action, or inaction that is being protested.
- The provision(s) of the solicitation, regulations, and/or laws upon which the protest is based, (i.e. identification of the technical specifications or item of content in the solicitation);
- All documentation supporting the allegations in the protest.

²⁹ Texas Local Government Code Section 262.031

³⁰ Texas Local Government Code 262.031

³¹ Texas Local Government Code 262.031(b)

³² 2 C.F.R. 200.318(k)

- A statement of the specific relief requested.

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 appropriate substantiating information. At the Protestor's discretion, a protest may be filed by electronic facsimile (with original copy by express mail) or by any other return receipt means. 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.

To be considered timely, protests concerning the content of a Bid/Proposal, including all attached documents must be filed with the Purchasing Department within ten (10) calendar days after the Purchasing Department first advertises the Bid/Proposal and received not later than 5:00 p.m. (local time) on the tenth day. If the tenth calendar day falls on a weekend or legal holiday, the protest period ends at 5:00p.m. (local time) the following business day.

The Purchasing Department shall issue a written decision on the protest for content prior to opening or submission of proposals. Protests concerning a recommendation for award, on any ground not based upon the content of the Bid/Proposal, must be filed with the Purchasing Department by an Interested Party within fifteen (15) calendar days after the Purchasing Department mails the recommendation for award notice and received not later than 5:00 p.m. (local time). If the fifteenth calendar day falls on a weekend or legal holiday, the Protest period ends at 5:00 p.m. (local time) the following business day. The Purchasing Department will acknowledge only one protest on Bid/Proposal content. Any additional protests must be filed within the designated time after proposal submittal. An appeal to the Commissioners Court concerning a denial to a protest, relating to a recommendation for award solicited by this Bid/Proposal must be filed by an Interested Party within five (5) calendar days after receipt of the denial of the protest.

The date of filing must be the date of receipt by the Purchasing Department. All Protests must be filed in writing to:

Burnet County Purchasing
133 E Jackson St.
Burnet, Texas 78611

No other location or addressee shall be acceptable.

The Purchasing Department will respond to each substantive issue raised in all timely filed protests concerning content or contract award. The Purchasing Department shall make a written determination of the protest, within forty-five (45) working days from receipt of Protest. Any decision rendered by the Purchasing Department may be appealed to the Burnet County Commissioners Court. Note: Written appeals addressed to the attention of the Burnet County Commissioners Court must be delivered to the Burnet County Purchasing Office address for date and time stamping.

Vendors who wish to protest, dispute, or appeal a procurement action or contract award by the County must present their case to Commissioner Court the day the contract is recommended for award or the procurement action is taken. Commissioners Court meetings are held at 220 S. Pierce St, Burnet, TX 78611. The Protestor may withdraw its protest or appeal at any time before the Purchasing Department or Burnet County Commissioners Court issues a final decision.

K. ELIGIBILITY & DEBARMENT STATUS

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

The Texas General Land Office, and therefore Burnet 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. Burnet 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.

L. COMPETITION

Texas law prohibits all separate, sequential, or component purchases made with the intent of avoiding the competitive procurement requirements.³³ Burnet County shall not break down requirements aggregating more than the Simplified Acquisition Threshold (or the Micro Purchase threshold) into multiple purchases that are less than the applicable threshold (commonly called “bid splitting” or “unbundling”) merely to permit use of the small purchase procedures or avoid any requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the County’s procurements.

All procurement transactions, regardless of dollar amount, shall be conducted so as to provide “maximum full and open competition” consistent with the standards of 2 C.F.R. 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft estimates, specifications, requirements, statements of work, or invitations for bid or requests for proposals shall be excluded from competing for such procurements.³⁴

³³ Texas Local Government Code Section 262.023(c)

³⁴ 2 C.F.R. 200.319(a) and Texas Attorney General Opinion Nos. JM-940 and JM-282, both cited in Texas Attorney General Opinion No. JC-0124

To the greatest extent feasible Burnet 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;³⁵
- Requiring unnecessary experience and excessive bonding;³⁶
- Noncompetitive pricing practices between firms or between affiliated companies;³⁷
- Noncompetitive awards to consultants that are on retainer contracts;³⁸
- Organizational conflicts of interest;³⁹
- 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;⁴⁰ and
- Any arbitrary action in the procurement process.⁴¹

Burnet County shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.⁴²

Burnet County shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named

³⁵ 2 C.F.R. 200.319(a)(1)

³⁶ 2 C.F.R. 200.319(a)(2)

³⁷ 2 C.F.R. 200.319(a)(3)

³⁸ 2 C.F.R. 200.319(a)(4)

³⁹ 2 C.F.R. 200.319(a)(5)

⁴⁰ 2 C.F.R. 200.319(a)(6)

⁴¹ 2 C.F.R. 200.319(a)(7)

⁴² 2 C.F.R. 200.319(b)

brand which must be met by offers shall be clearly stated.⁴³ 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;⁴⁴ 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."⁴⁵

Additionally, Burnet County shall identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or Statements of Qualifications.⁴⁶

M. VENDOR LIST

Burnet County supports the principles of equal opportunity. The County encourages the participation of all vendors in the procurement of supplies, materials, equipment, and services. Purchasing employees are encouraged to contact potential new vendors so that the benefit of governmental purchasing is made available to as many vendors as possible.

Burnet County may maintain a list of vendors and shall distribute notice of contract opportunities to the list. Burnet County shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Burnet County shall not preclude potential bidders or offerors from qualifying during the solicitation period and shall accept bids or offers from any qualified and responsible vendor not on an existing vendor list.⁴⁷

N. METHODS OF PROCUREMENT

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

⁴³ 2 C.F.R. 200.319(c)(1)

⁴⁴ Texas Attorney General Opinion No. JC-0124

⁴⁵ Texas Attorney General Opinion No. JC-0124

⁴⁶ 2 C.F.R. 200.319(c)(2)

⁴⁷ 2 C.F.R. 200.319(d)

1. Micro Purchases

Micro purchases are acquisitions of products or services where the aggregate acquisition price does not exceed the micro purchase threshold.⁴⁸ The current micro purchase threshold has been set at \$10,000.⁴⁹ To the extent practicable, Burnet County shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if Burnet County considers the price to be reasonable.⁵⁰

However, for construction work subject to 40 U.S. Code Chapter 31, the micro purchase is set at \$2,000. Prime construction contracts in excess of \$2,000 awarded by Burnet County or its subrecipients must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).⁵¹

2. Small Order Purchases

Small Order Purchases are the relatively simple and informal procurement methods for securing services, supplies, or other property where the aggregate acquisition price is more than the micro-purchase threshold but does not exceed the Simplified Acquisition Threshold. The current Simplified Acquisition Threshold has been set at \$250,000.⁵² However, the County's Simplified Acquisition Threshold has been set at \$50,000.⁵³ If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.⁵⁴

3. Sealed Bidding

Sealed Bids (sometimes known as “formal advertising”) are used when the goods or services are expected to exceed the Simplified Acquisition Threshold, which for Burnet County has been set at \$50,000.⁵⁵ Under Sealed Bidding, the County 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 responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bids, is the lowest in price.⁵⁶ The sealed bid method shall be Burnet County's preferred method for procuring construction, provided the following conditions are present:⁵⁷

⁴⁸ 2 C.F.R. 200.67

⁴⁹ 41 U.S. Code 1902

⁵⁰ 2 C.F.R. 200.320(a)

⁵¹ 2 C.F.R. Appendix II to Part 200 (D)

⁵² 41 U.S. Code § 134

⁵³ Texas Local Government Code Section 262.023

⁵⁴ 2 C.F.R. 200.320(b)

⁵⁵ Texas Local Government Code Section 262.023

⁵⁶ 2 C.F.R. 200.320(c)(1)

⁵⁷ 2 C.F.R. 200.320(c)(1)

- A complete, adequate, and realistic specification or purchase description is available;⁵⁸
- Two or more responsible bidders are willing and able to compete effectively for the business;⁵⁹ 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.⁶⁰

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised.⁶¹ Pursuant to Texas Local Government Code Section 262.021, Invitations for Bid 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;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;⁶²
- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;⁶³
- 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;⁶⁴ and
- Any or all bids may be rejected if there is a sound documented reason.⁶⁵

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 the County.⁶⁶ Competitive bidding requires approval of the contract by the Commissioners Court before final execution of a contract.

4. Competitive Proposals

⁵⁸ 2 C.F.R. 200.320(c)(1)(i)

⁵⁹ 2 C.F.R. 200.320(c)(1)(ii)

⁶⁰ 2 C.F.R. 200.320(c)(1)(iii)

⁶¹ 2 C.F.R. 200.320(c)(2)(i)

⁶² 2 C.F.R. 200.320(c)(2)(ii)

⁶³ 2 C.F.R. 200.320(c)(2)(iii)

⁶⁴ 2 C.F.R. 200.320(c)(2)(iv)

⁶⁵ 2 C.F.R. 200.320(c)(2)(v)

⁶⁶ Texas Local Government Code Section 262.026

Also called contracting by negotiation, the competitive proposal method is used for requirements exceeding the Simplified Acquisition Threshold when conditions are not appropriate for sealed bidding. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.⁶⁷

a. Request for Proposal (RFP)

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

Generally, a fixed price or cost reimbursement contract will be awarded to the responsive and responsible offeror whose proposal is most advantageous to the program and conforms with all the material terms and conditions of the Request for Proposals, with price and other factors considered.⁶⁸

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

- Requests for Proposals shall be publicized and identify all evaluation criteria and factors for award and their relative importance. Any response to publicized requests for proposals shall be considered to the maximum extent practical;⁶⁹ and
- Proposals shall be solicited from an adequate number of qualified sources;⁷⁰
- Burnet County shall have a written method for conducting technical evaluations of the proposals received and for selecting recipients.⁷¹

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

Under the Competitive Proposals method, the County may publicly solicit for Statements of Qualifications through a Request for Qualifications. Qualification-based procurement is only allowable in the selection of architectural, engineering services, or surveying services.⁷² Requests for Qualifications are a form of procurement in which only technical qualifications are evaluated and price is not requested nor used as an evaluation factor. Generally, a fixed price or cost reimbursement contract shall be awarded to the most

⁶⁷ 2 C.F.R. 200.320(d)

⁶⁸ 2 C.F.R. 200.320(d)(4)

⁶⁹ 2 C.F.R. 200.320(d)(1)

⁷⁰ 2 C.F.R. 200.320(d)(2)

⁷¹ 2 C.F.R. 200.320(d)(3)

⁷² 2 C.F.R. 200.320(d)(5) and Texas Government Code Section 2254.004

qualified, responsive, and responsible offeror, subject to negotiation of fair and reasonable compensation.

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

- Requests for Qualifications shall be publicized and identify all evaluation criteria and factors for award and their relative importance. Any response to publicized requests for qualifications shall be considered to the maximum extent practical;⁷³ and
- Qualifications shall be solicited from an adequate number of qualified sources;
- Burnet County shall have a written method for conducting technical evaluations of the Qualifications received and for selecting recipients.

5. Noncompetitive Procurements

“Noncompetitive” means a procurement through either a “sole source,” when the County solicits an offer from one source, or a “single source,” when the County solicits offers from multiple sources but receives only one or the competition is determined inadequate.⁷⁴ Procurement by noncompetitive proposals may be used only when one or more of the following circumstances apply:

- The item is available only from a single source;⁷⁵
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;⁷⁶
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from Burnet County;⁷⁷ or
- After solicitation of a number of sources, competition is determined inadequate.⁷⁸

6. Alternative Procurement Methods

a. Job Order Contracting

Job Order Contracting is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of buildings when the work is of a recurring nature, but the delivery times, type, and quantities of work required are indefinite.⁷⁹ Under a Job Order Contract, the County awards a base contract with pre-established tasks and prices, specifications, and general contract conditions.

⁷³ 2 C.F.R. 200.320(d)(1)

⁷⁴ 2 C.F.R. 200.320(f)

⁷⁵ 2 C.F.R. 200.320(f)(1)

⁷⁶ 2 C.F.R. 200.320(f)(2)

⁷⁷ 2 C.F.R. 200.320(f)(3)

⁷⁸ 2 C.F.R. 200.320(f)(4)

⁷⁹ Texas Government Code 2269.401

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. Burnet 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 County shall establish the maximum aggregate contract price when it advertises the contract opportunity. Commissioners Court shall approve each job, task, or purchase order that exceeds \$50,000.

b. Alternates

Burnet 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, the County may set in place alternative deductibles or alternate add-ons.

When necessary because of limited available funding, the 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, the 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 the County may be able to complete on its own or items that would not have an adverse effect on the project if omitted.

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

It is the policy of Burnet County that Minority and Women Business Enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Burnet County and its subrecipients and contractors must take all necessary affirmative steps to assure that minority businesses, small businesses, women's business

enterprises, historically underutilized businesses, and labor surplus area firms are used when possible.⁸⁰ Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;⁸¹
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;⁸²
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;⁸³
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;⁸⁴
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;⁸⁵ and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.⁸⁶

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

P. CONTRACT COST AND PRICE

Burnet 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 be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.⁸⁷ Costs must meet three critical tests. The costs must be:

1. *Allowable*. The applicable cost principles will usually state whether a type of cost is allowable or not.⁸⁸

⁸⁰ 2 CFR 200.321(a)

⁸¹ 2 CFR 200.321(a)(1)

⁸² 2 CFR 200.321(a)(2)

⁸³ 2 CFR 200.321(a)(3)

⁸⁴ 2 CFR 200.321(a)(4)

⁸⁵ 2 CFR 200.321(a)(5)

⁸⁶ 2 CFR 200.321(a)(6)

⁸⁷ 2 C.F.R. 200.404

⁸⁸ 2 C.F.R. 200.403

2. *Allocable*. Costs are logically related to or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.⁸⁹
3. *Reasonable*. What a prudent business would pay in a competitive marketplace. A cost can be allowable, allocable and still not be what a prudent businessperson would pay.⁹⁰

1. Independent Cost Estimate

An Independent Cost Estimate (ICE) is the estimated cost of a proposed expenditure. An Independent Cost Estimate assists in evaluating the cost reasonableness of a contractor's proposed costs or prices on an objective basis and is a required procedure when conducting procurements that exceed the Simplified Acquisition Threshold.⁹¹

Before issuing a solicitation, Burnet County must develop an Independent Cost Estimate for the products or services to be purchased. If Burnet County intends to require a breakdown of estimated costs, the in-house Independent Cost Estimate should be broken down into the various cost elements.

2. Price and Cost Analysis

Harris County shall perform a Price or Cost Analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications.⁹² The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.⁹³

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.⁹⁴ Price analysis shall be used to verify that the overall price offered is fair and reasonable. Price analysis must be completed in all cases listed below to determine the reasonableness of the proposed contract price:

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

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

⁸⁹ 2 C.F.R. 200.405

⁹⁰ 2 C.F.R. 200.404

⁹¹ 2 C.F.R. 200.323(a)

⁹² 2 C.F.R. 200.323(a)

⁹³ 2 C.F.R. 200.323(a)

⁹⁴ Buying Right CDBG-DR and Procurement: A Guide to Recovery

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.

Cost Analysis shall be used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required, such as when an offeror is required to submit individual cost elements e.g., under architectural or engineering services contracts.⁹⁵ Burnet County must perform a Cost Analysis for any procurement action in excess of the Simplified Acquisition Threshold in which there is no price competition. A Cost Analysis will always be necessary under the following circumstances, unless cost reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation:

- When adequate price competition is lacking, such as under a Request for Qualifications;
- For non-compete or sole source procurements; or
- For contract modifications or change orders which exceed the Simplified Acquisition Threshold.

3. Negotiation of Profit

Burnet County must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where Cost Analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.⁹⁶

Q. BONDS / GUARANTEES

For projects under the Simplified Acquisition Threshold, there are no federal or local requirements for bid, payment, or performance bonds. However, for construction or building improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, bond policy must adequately protect Federal interest.⁹⁷ 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

⁹⁵ Buying Right CDBG-DR and Procurement: A Guide to Recovery

⁹⁶ 2 C.F.R. 200.323(b)

⁹⁷ 2 C.F.R. 200.325

For construction, public works, or facility improvement contracts or subcontracts expected to exceed \$100,000, Burnet County shall require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the bid price.⁹⁸ 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.⁹⁹ A bid bond must be executed with a surety company authorized to do business in this state.

2. Performance Bonds

For construction or facility improvement contracts or subcontracts exceeding \$50,000, Burnet County shall require a performance bond on the part of the contractor for 100 percent of the contract price.¹⁰⁰ A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.¹⁰¹ The performance bond is:

- Solely for the protection of Burnet County;
- In the entire amount of the contract; and
- Conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.¹⁰²

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 [Texas Government Code Section 2253.021]. 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.

⁹⁸ Texas Local Government Code Section 262.032

⁹⁹ 2 C.F.R. 200.325(a)

¹⁰⁰ Texas Local Government Code Section 262.032

¹⁰¹ 2 C.F.R. 200.325(b)

¹⁰² Texas Government Code Section 2253.021

A bond executed for a public work contract with a governmental entity, such as the 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, the 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 the County.

R. PREVAILING WAGES AND DAVIS-BACON AND RELATED ACTS

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

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. Burnet County shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

Burnet County shall report all suspected or reported violations to the Federal awarding agency.

The County shall ensure its contractors follow wage requirements found in 40 U.S. Code Chapter 31 subchapter IV where prevailing wages are discussed.¹⁰³

X. CONTRACT ADMINISTRATION

Burnet County shall maintain a system for contract administration to ensure contractor conformance with the terms, conditions, and specifications in the contract and to ensure adequate and timely follow up of all purchases. As part of this system, Burnet County shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

A. RECORD RETENTION

Although 2 C.F.R. 200.333 requires the retention of all records and documentation pertinent to the federally-funded expenditure for a minimum of three (3) years from the date of execution of the closeout agreement for a grant, Burnet County shall abide by the Burnet County Local Government Records Control Schedule, which is currently the most restrictive of local, federal and state regulations, and requires the retention of records for a minimum of five (5) years. If a local, federal,

¹⁰³ 2 C.F.R. Appendix II to Part 200 (D).

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. Burnet County shall also ensure compliance, to the extent feasible, with Texas Government Code Section 441.151 et seq.

B. CONTRACTOR REQUIREMENTS & RESPONSIBILITIES

Contractor requirements are found below:

1. Minimum Insurance Requirements

When entering into a building or construction contract, Burnet County shall comply with 28 Texas Administrative Code Section 110.110(c)(7) and the minimum insurance requirements of the State of Texas. Burnet 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, the County may require coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution, or other coverage. Burnet 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. Burnet County shall be named Additional Insured on primary/non-contributory basis.
- Umbrella/Excess Liability (Burnet 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. Burnet County shall require that contractors furnish evidence of

such insurance to the 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 Burnet County within the solicitation document.

2. Workers' Compensation Requirements

When entering into a building or construction contract, Burnet County shall comply with 28 Texas Administrative Code Section 110.110(c)(7). Burnet 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 the 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. Vendors Owing Taxes or Other Debts

Pursuant to Texas Local Government Code 262.0276, if, during the performance of this contract, Contractor's taxes become delinquent or Contractor becomes otherwise indebted to Burnet County, Burnet County reserves the right to provide notice to the Auditor or Treasurer pursuant to Texas Local Government Code 154.045.

Whether or not a Contractor's taxes are delinquent will be determined by an independent review of the Tax Office records. Contractors are encouraged to visit the Tax Office website at www.hctax.net, set up a portfolio of their accounts and make their own initial determination of the status of their tax accounts. Contractors 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. Furthermore, if, during the performance of this contract, a Contractor's taxes become delinquent or a vendor becomes otherwise indebted to Burnet County, Burnet County reserves the right to provide notice to the Auditor or Treasurer pursuant to Texas Local Government Code §154.045. This policy is effective for all bids due on or after November 1, 2009.

XI. MANDATORY CONTRACT CLAUSES & PROVISIONS

Federally-funded work requires that specific contract documents and language must be made a standard part of every solicitation and/or contract involving federal dollars. Contracts awarded by Burnet County using federal grant funds shall contain the applicable provisions and clauses required by Federal statutes, Executive orders, and implementing regulations, including those described in Appendix II to Part 200.¹⁰⁴ Any document that is signed by the County and has legal implications and consequences shall be carefully reviewed by the Burnet County Attorney's Office with respect to its completion.

Burnet County shall prepare contracts with contractors and agreements with subrecipients and other government agencies, and shall ensure that all contracts include the provisions required for federally-funded contracts, including performance requirements and period of performance or date of completion. All contracts shall adhere to cost principles outlined in 2 C.F.R. 200.402-200.410.

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

A. REMEDIES

Contracts awarded by Burnet County for more than the Simplified Acquisition Threshold, which for Burnet County is set at \$50,000, shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.¹⁰⁵

B. TERMINATION FOR CAUSE & CONVENIENCE

All contracts awarded by Burnet County in excess of \$10,000 shall address termination for cause and convenience, including the manner by which it will be effected and the basis for settlement.¹⁰⁶

C. CIVIL RIGHTS REQUIREMENTS

Burnet County shall comply with the various civil rights requirements when carrying out activities under a federal award, including but not limited to those requirements pursuant to Title VI of the Civil Rights Act of 1964¹⁰⁷. These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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

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

¹⁰⁴ 2 C.F.R. 200.326

¹⁰⁵ 2 C.F.R. Appendix II to Part 200 (A)

¹⁰⁶ 2 C.F.R. Appendix II to Part 200 (B)

¹⁰⁷ Pub. L. 88-352, 78 Stat. 241

2. Nondiscrimination on the Basis of Sex

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

3. Nondiscrimination on the Basis of Disability

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

4. Nondiscrimination on the Basis of Handicap

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

5. Nondiscrimination on the Basis of Age

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

6. Nondiscrimination on the Basis of Limited English Proficiency

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

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

D. EQUAL EMPLOYMENT OPPORTUNITY

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

Burnet County shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, gender identity, disability,¹⁰⁸ veteran status,¹⁰⁹ or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. Part 60–1.3 shall include the equal opportunity clause provided under 41 C.F.R. 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to

¹⁰⁸ 48 C.F.R. 52.222-36 and 41 C.F.R. 60-741.5(a)

¹⁰⁹ 41 C.F.R. 60.300

Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”¹¹⁰

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

- (i) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by County setting forth the provisions of this nondiscrimination clause.
- (ii) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- (iii) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
- (iv) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

¹¹⁰ 2 C.F.R. Appendix II to Part 200 (C)

- (v) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of Contractor's noncompliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, the contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No.11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No.11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) Contractor will include the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24,1965, so that such provisions will be binding upon each subconsultant or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Burnet County agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. However, as a local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of Burnet County which does not participate in work on or under the contract.

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

Burnet County further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted

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

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

E. DAVIS-BACON AND RELATED ACTS

Burnet County shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3148 and 40 U.S.C. 276a to a-7). When required by Federal program legislation, construction contracts in excess of \$2,000 awarded by Burnet County shall require compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 C.F.R. part 3). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

Burnet County shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. Burnet County shall report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c and 40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Burnet County shall report all suspected or reported violations to the Federal awarding agency.¹¹¹

¹¹¹ 2 C.F.R. Appendix II to Part 200 (D)

F. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Burnet County shall comply with the Contract Work Hours and Safety Standards Act, pursuant to 40 U.S. Code 3701–3708 and 40 U.S. Code 327-333. Where applicable, all contracts awarded by the Burnet County in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S. Code 3702 and 3704, as supplemented by Department of Labor regulations.¹¹² Under 40 U.S. Code 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S. Code 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.¹¹³

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

G. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Patents, copyrights, and rights in data requirements arise within the context of federally assisted projects, the purpose of which is to finance the development of a product or information. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. 401.2 (a) and Burnet County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Burnet County shall comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.¹¹⁴

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

Burnet County shall comply with the Clean Air Act¹¹⁵ and the Federal Water Pollution Control Act.¹¹⁶ The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Where applicable, all contracts awarded by the Burnet County in excess of

¹¹² 29 C.F.R. Part 5

¹¹³ 2 C.F.R. Appendix II to Part 200 (E)

¹¹⁴ 2 C.F.R. Appendix II to Part 200 (F) and 35 U.S. Code 200

¹¹⁵ 42 U.S.C. 7401–7671q

¹¹⁶ 33 U.S.C. 1251–1387, as amended.

\$150,000 shall contain a provision for compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. The Federal Water Pollution Control Act (“Clean Water Act”) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.¹¹⁷

Section 508 of the Clean Water Act¹¹⁸ and EPA’s implementing regulations at 2 C.F.R. Part 1523, subpart J, disqualify persons convicted of certain offenses from eligibility to receive any contract, subcontract, assistance, subassistance, loan, or other nonprocurement benefit or transaction that is prohibited by a Federal agency under the government debarment and suspension system if a person will perform any part of the transaction or award at the facility giving rise to the conviction and the person owns, leases, or supervises the facility. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).¹¹⁹

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

I. ENERGY EFFICIENCY

Burnet County shall comply, as applicable, with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).¹²⁰

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

J. DEBARMENT AND SUSPENSION

Burnet County shall comply with Executive Orders 12549 and 12689, which prohibit awards, subawards, and contracts with parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.¹²¹

Burnet County shall not award, contract with, or use debarred, suspended or ineligible contractors or subrecipients. Burnet County shall ensure, prior to award, that all subrecipients or contractors receiving federal funds have met all the eligibility requirements outlined in state and Federal law.

¹¹⁷ 33 U.S.C. 1251-1387

¹¹⁸ 33 U.S.C. 1368

¹¹⁹ 2 C.F.R. Appendix II to Part 200 (G)

¹²⁰ 2 C.F.R. Appendix II to Part 200 (H)

¹²¹ 2 C.F.R. Appendix II to Part 200 (I)

Burnet County shall notify subrecipients and contractors that it is their sole responsibility to verify contractor and subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

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

K. BYRD ANTI-LOBBYING

Burnet County shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. Code 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.¹²²

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

L. PROCUREMENT OF RECOVERED MATERIALS

Burnet County shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, by procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; providing a preference to products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S. Code 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.¹²³

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

M. WHISTLEBLOWER PROTECTION ACT

¹²² 2 C.F.R. Appendix II to Part 200 (J)

¹²³ 2 C.F.R. Appendix II to Part 200 (K) and 2 C.F.R. 200.322

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

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

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

COPYRIGHTS AND RIGHTS IN DATA

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

XII. OTHER GRANT-SPECIFIC REQUIREMENTS

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

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

A. FEMA FUNDING

As applicable, Burnet County sets forth additional requirements as provided under FEMA grant requirements.

1. Section 406 Mitigation Requirements

When applicable, Burnet County shall comply with Section 406 mitigation requirements, which require that proposed mitigation efforts are cost-effective, technically feasible, and in compliance with Environmental and Historic Preservation (“EHP”) laws, the National Environmental Policy Act (“NEPA”) regulations, and Executive Orders (“EO”). In addition, FEMA requires that the mitigations do not negatively impact surrounding areas or create susceptibility to damage from another hazard.

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

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

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

When applicable, Burnet County shall include a provision in its contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

3. No Government Obligation to Third Parties

When applicable, Burnet County shall include a provision in its contracts that states that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the contract and is not subject to any

obligations or liabilities to Burnet County, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the contract.

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

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

5. Access to Records

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

6. Seals, Logos, and Flags.

When applicable, Burnet County shall include a provision in its contracts that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

7. Restrictions on Lobbying

In addition to the Byrd Anti-Lobbying Requirements under 31 U.S. Code 1352, no FEMA financial assistance may be expended by a recipient, subrecipient, contractor, or subcontractor to pay any person to influence, or attempt to influence, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal. If a third-party contract will exceed \$100,000, before awarding the contract, Burnet County must obtain a lobbying certification and, if applicable, a lobbying disclosure from a prospective third-party contractor.¹³²

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

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

1. Building Standards

The Texas General Land Office (GLO) has published requirements that state that all rehabilitation, reconstruction, or new construction must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (1) ENERGY STAR (Certified Homes or Multifamily High-Rise), (2) Enterprise Green Communities, (3)

¹³² 44 C.F.R. 18.110

LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), or (4) ICC– 700 National Green Building Standard. The GLO’s required construction standards are located primarily in the Site and Development Restrictions section of the GLO CDBG-DR Housing Guidelines. These include:

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

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

2. Contract Provisions

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

a. Verification Not to Boycott Israel

As required by Texas Government Code Chapter 2270, Burnet County shall not enter a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.¹³³

b. Transactions with Terrorist Organizations Prohibited

As required by Texas Government Code Chapter 2252, Burnet County shall not enter into a governmental contract with a company that is identified on a list prepared and maintained Vendor represents and certifies that, at the time of execution of this Agreement neither Vendor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist

¹³³ Texas Government Code 2270.002

organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.¹³⁴

c. Information Security

Definitions

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

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

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

Security and Privacy Compliance

- a. Contractor shall keep all PII and SPI received or generated under the Contract and any documents related thereto strictly confidential.
- b. Contractor shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- c. Contractor shall implement administrative, physical, and technical safeguards to protect PII and SPI that are no less rigorous than accepted industry practices including, without limitation, the guidelines in the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework Version 1.1. All such safeguards shall comply with applicable data protection and privacy laws.
- d. Burnet County shall legally bind any contractors and their subcontractors to the same requirements stated herein and obligations stipulated in the Contract and documents related thereto. Contractor shall ensure that the requirements stated herein are imposed on Contractor’s subcontractor(s).
- e. Contractor will not share PII or SPI with any third parties, except as necessary for Contractor’s performance under the Contract.

¹³⁴ Texas Government Code 2252.152

- f. Contractor will ensure that initial privacy and security training, and annual training thereafter, is completed by its employees and contractors, including any subcontractor, that have access to PII or SPI or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise personally handle PII or SPI on behalf of Burnet County. Contractor agrees to maintain and, upon request, provide documentation of training completion.
- g. Any PII or SPI maintained or stored by Contractor or any contractor, including any subcontractor, must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.

Data Ownership

- a. The GLO shall retain full ownership of all data, including PII and SPI, provided to Contractor by Burnet County or the GLO.
- b. Upon termination of the Contract, Contractor shall promptly return to Burnet County and/or the GLO all Burnet County-owned or GLO-owned data possessed by Contractor and its employees, agents, or contractors, including any subcontractor. Contractor shall retain no copies or back-up records of Burnet County-owned or GLO-owned data. If such return is infeasible, as mutually determined by Burnet County and the GLO and Contractor, the obligations set forth in this Appendix, with respect to Burnet County-owned or GLO-owned data, shall survive termination of the Contract and Contractor shall limit any further use and disclosure of GLO Data to the purposes that make the return of Burnet County-owned or GLO-owned data infeasible. In lieu of the requirements in this Section 3.2, Burnet County or the GLO may direct Contractor to destroy any Burnet County-owned or GLO-owned data in Contractor's possession. Any such destruction shall be verified by Contractor and Burnet County and/or the GLO.

Data Mining

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

Breach of Security

- a. Contractor agrees to provide Burnet County and/or the GLO with the name and contact information for a Contractor employee which shall serve as the primary data security contact.

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

Right to Audit

- a. Upon the Burnet County's request and to confirm Contractor's compliance with this Appendix, Contractor grants Burnet County, or the GLO, permission to perform an assessment, audit, examination, investigation, or review of all controls in the Contractor's, or any of Contractor's contractors, including any subcontractors, physical and/or technical environment in relation to PII or SPI. Contractor agrees to fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that stores, processes, or transports PII or SPI. In lieu of a Burnet County or GLO-conducted assessment, audit, examination, investigation, or review, Contractor may supply, upon Burnet County or GLO approval, the following reports: SSAE18, ISO/ICE 27001 Certification, FedRAMP Certification, and PCI Compliance Report. Contractor shall ensure that this clause concerning the Burnet County and the GLO's authority to assess, audit, examine, investigate, or review is included in any subcontract it awards.
- b. At the GLO's request, Contractor agrees to promptly and accurately complete a written information security questionnaire provided by Burnet County or the GLO regarding Contractor's business practices and information technology environment in relation to GLO Data.