



Lubbock County Purchasing Policy

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LUBBOCK COUNTY PURCHASING POLICY

It is the policy of Lubbock County to conduct all purchasing strictly on the basis of economic and business merit to best serve the citizens of Lubbock County. In order to maintain the best price for goods and services in an efficient manner, purchases shall be divided into three (3) categories. Procedures for each category shall be followed by all departments unless specifically exempted by the Lubbock County Commissioners' Court. The purchase of any computer equipment (regardless of price) to be attached to the County network, or supported by LCIS, must be coordinated through LCIS.

The Purchasing Department is the only point of contact for vendors seeking to do business with Lubbock County. It is the intent of the Commissioners' Court that no elected official or department head accept proposals from vendors, setup sales meetings on behalf of a vendor or refer the vendor to other elected officials or department heads.

I. Purchasing Categories

- A. Purchases up to \$1,500.00 may be made by a department head for the continuing operation of each department, subject to the provisions of Sec. I.A.3. below. The department head will have the responsibility of making this level of purchase in the most prudent and cost effective manner. In no event will partial purchases be made with the intent of circumventing the provisions of this policy.
 1. No purchase shall be made without a purchase order to support the award of purchase unless specific exceptions are provided for in this policy.
(Ref. Sec. IV)
 2. Prior to any purchase, it shall be the responsibility of each department head to insure adequate funding is available in the current budget line item for each purchase.
(Ref. Sec. V)
 3. **All "Inventoriable Items" will be purchased with a Purchase Order.** "Inventoriable Item" is defined as a single non-consumable item costing *more than \$1,000.00*. (Note: At the written request of a department head, non-consumable items costing less than \$1,000.00 but deemed to be highly pilferable may be added to inventory. These items must have been purchased with a Purchase Order.)
- B. Purchases of more than \$1,500.00 and less than \$50,000.00 will be handled by the Lubbock County Purchasing Department, using an informal competitive bid procedure. This level does not require additional Commissioners' Court approval.
 1. Department heads shall contact the Purchasing Agent, via written requisition, requesting the item to be purchased. The department head will be responsible for providing written specifications for the requested item.

2. The Purchasing Agent, or Department head, will contact a minimum of three (3) vendors who are able to provide the requested item. Each vendor will be required to provide a price quotation or respond to an Informal Bid, and provide any other information requested by the Purchasing Agent. The Purchasing Agent shall award the purchase to the vendor with the lowest responsible price quotation, as agreed upon by the Purchasing Agent and the requesting department head and the Purchasing Agent shall issue a purchase order for the item.
 3. If the Purchasing Agent and the requesting department head are not in agreement as to the lowest responsible bid award, the Commissioners' Court will consider all bids at the next scheduled meeting. The department head and Purchasing Agent may present reasons for their bid award preference and the final decision will be made by the Commissioners' Court.
- C. Purchases of \$50,000.00 or more will be subject to the formal bid procedure of Lubbock County.

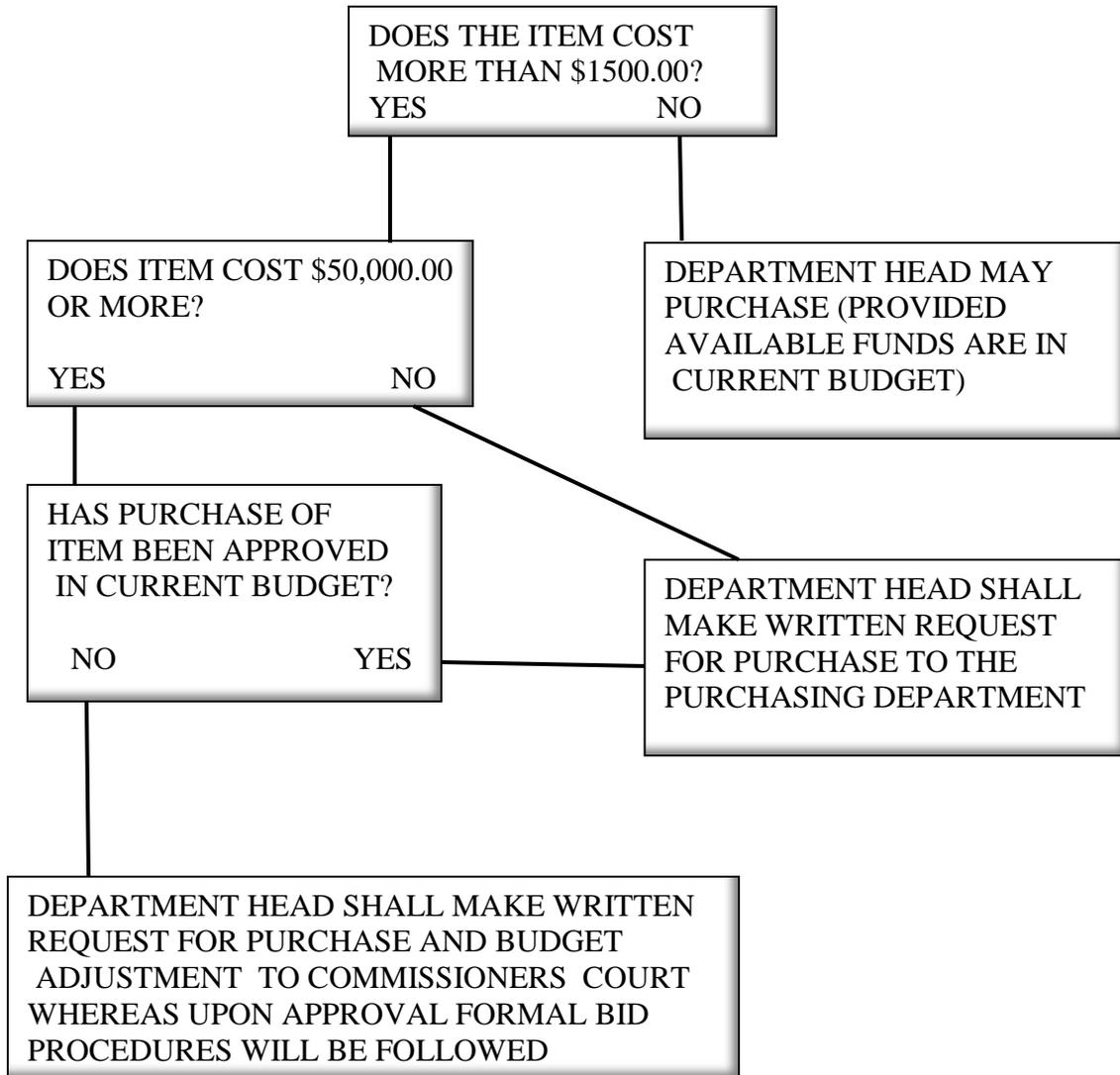
1. **COMPETITIVE BID AND REQUEST FOR PROPOSAL (RFP):** Department heads must make a request for purchase, in writing, to the Lubbock County Commissioners' Court, unless approval for the purchase of the *specific* item is in the current budget. Upon approval by the Commissioners' Court, the Purchasing Agent shall seek formal bids as provided for in Texas Local Government Code. The requesting department shall design the specifications in concert with the Purchasing Agent. Bids shall be opened and evaluated by the Purchasing Agent and requesting department in accordance with the criteria set out in the bid or proposal. Following the evaluation, the Commissioners' Court will award the purchase to the lowest responsible bidder meeting specifications.
2. **COMPETITIVE PROPOSAL :** Upon a finding by the Commissioners' Court that it is impractical to prepare detailed specifications for an item to support the award of a purchase contract, the Purchasing Agent may use the multi-step competitive proposal procedure provided for in Texas Local Government Code.
3. **ALTERNATIVE COMPETITIVE PROPOSAL:** As provided for in Texas Local Government Code, the Purchasing Agent may use an alternative competitive proposal procedure for the purchase of insurance, high technology items, landscape maintenance, travel management, recycling, or as provided for by law.

- II. A. Pursuant to Texas Local Government Code 262.0235, "Procedures Adopted by County Purchasing Agents for Electronic Bids or Proposals", Lubbock County adopts the following rules to ensure the identification, security, and confidentiality of electronic bids or proposals.

All documents uploaded into Bonfire as part of electronic bid/proposal submission remain inaccessible to Lubbock County until defined bid/proposal closing date and time.

1. Data transmission occurs through a 256-bit SSL encrypted connection. The data is stored in an encrypted state upon arriving on the server.
 2. Authorized purchasing personnel will have a unique log-in username and password.
 3. Bids/proposals will be identified by a bid/proposal number assigned for that project from the purchasing department.
 4. Access to the system by authorized users will be logged and tracked in order to record when a user has accessed the system.
 5. All vendor data is sealed until bid/proposal closing date and time. Vendor will continue to have access until closing date and time.
 6. Only the Purchasing Agent, or the agent's designee may open a bid/proposal at the closing date and time.
- B. Lubbock County reserves the right to reject any or all bids. In the event all bids for an item are rejected, the Commissioners' Court shall instruct the Purchasing Agent as to the appropriate action to take following the rejection of bids.

LUBBOCK COUNTY PURCHASING POLICY FLOW CHART



Note: The purchase of any computer equipment (regardless of price) to be attached to the County network, or supported by LCIT, must be coordinated through LCIT.

III. Exemptions to Competitive Bidding Requirements:

- A. The Commissioners' Court, by order, has exempted from the competitive bidding requirements under Sec. I, purchase of items required to be made due to a public calamity to provide relief for the citizens or preserve Lubbock County property.
- B. The Commissioners' Court will, by this order, exempt the following type of purchases from the competitive bidding requirement under Sec. I.C:
 - 1. An item necessary to protect the public health or safety of citizens of Lubbock County;
 - 2. An item necessary due to unforeseen damage to machinery, equipment or other public property;
 - 3. The purchase of personal or professional services, (including education and travel);
 - 4. The purchase of land or right-of-way;
 - 5. Personal property sold:
 - a) at an auction by a licensed auctioneer;
 - b) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business and Commerce Code; or
 - c) by a political subdivision of this state, a state agency of this state or an entity of the federal government
 - 6. The renewal or extension of a lease or equipment maintenance agreement if:
 - a) the lease was let by competitive bid the preceding year;
 - b) the renewal or extension does not exceed one year; and
 - c) the renewal or extension is the first renewal or extension of the lease or agreement.

IV. No purchase shall be made without a PURCHASE ORDER, issued in advance of the purchase, subject to the following exceptions:

- 1. Law Library Publications
- 2. Employee Travel Expense Reimbursement
- 3. Contract employees to include, but not be limited to, any court ordered contract employees, mediators, counselors and therapists.
- 4. Purchases made on a County Purchasing Card for legitimate business purposes in accordance with County policies. **Only a County issued credit card may be used to make purchases on behalf of the County.** Purchases made on personal credit cards will not be eligible for reimbursement as of November 1, 2012. The only exemptions to be considered will be for travel related emergency expenses.
- 5. General Assistance welfare payments to include payments for food, utilities, shelter, funerals and other approved emergencies.

- V. A written request for a PO or a purchase requisition must be presented to the Purchasing Department and a PO issued *prior to* a purchase being made (telephone requests for POs will not be accepted), with the exception of items covered in paragraph IV (above) and purchases made using Lubbock County Purchasing Cards. In cases such as equipment repair, where an exact cost may not be determined in advance, the PO can be written for an estimated amount and then amended once the actual cost is determined.
- VI. It will be the responsibility of the department head to insure adequate funding is available in the current budget line item prior to any purchase being made.
- VII. No payment shall be made for any purchase unless adequate funds are available in the appropriate budget line item of the department making said purchase.
- VIII. Payment for any unauthorized purchase (ie: purchases made without a supporting PO) or any purchase made without adequate funding in the appropriate budget line item may be the responsibility of the individual making said purchase.
- IX. The following items cannot be purchased with County funds:
1. Food or beverages for departmental parties, retirements, etc. Meals for specific County sponsored events must be approved in advance by the Commissioners Court. Recurring events can be blanket approved for the fiscal year. Requests for payment or reimbursement must be accompanied by a copy of the Commissioners Court Minutes showing approval for the specific event.
 2. Break Room equipment and supplies such as stoves, refrigerators, microwave ovens, televisions, cable service, small appliances, snacks, plates, cups, etc.
 3. Any item for personal use. This includes any décor items for county employee's offices including, but not limited to, framed or unframed pictures, maps, flags or any other decorative items. Contact the Purchasing Director if you have any questions regarding this item.
- X. Whenever found to be to the County's advantage, the Purchasing Agent/department head shall use cooperative purchasing agreements with other governmental entities (ie: General Services Commission, City of Lubbock) as an additional quotation or bid price.
- XI. It is the policy of the Lubbock County that, in all governmental purchases, preference be given to the purchase of products made from recycled material, if those products containing such recycled material meet applicable quality and quantity standards. To that end, each person responsible for purchasing should:

1. Periodically review procedures and specifications in order to eliminate those procedures and specifications that explicitly discriminate against the use of recycled products; and
 2. Encourage the use of products made from recycled products and from products that can be recycled.
- XII. All bids for annual contracts for goods or services must be approved by the Lubbock County Commissioners' Court before any purchase of those goods or services can be made.
- XIII. The use of the purchasing power of Lubbock County for personal purchases is prohibited. No one may use the name of Lubbock County for any personal purchase or charge any personal purchase to Lubbock County. Any such action is prohibited and may be grounds for prosecution.
- XIV. Blanket Purchase Orders (BPOs) may be established in order to reduce the number of purchase orders originating from a single vendor. Care must be taken to ensure the amount encumbered on a BPO is an accurate estimate of what the actual annual expenditure will be.
- XV. Bid Evaluation and Contract Award

Evaluation of bids will be based on the following factors: (1) the relative prices of the bids, including the cost of repair and maintenance of heavy equipment, and the cost of delivery and hauling of road construction materials; (2) compliance of goods and services offered with the bid specifications; and (3) the responsibility of the vendor, including the vendor's safety record if the Commissioners Court has adopted a definition of safety that is included in the bid, and the past performance of the vendor.

When the lowest priced bid is not the best bid, clear justification for not selecting the lowest bidder must be documented to the Court. This recommendation must be supported by clear and concise documentation from the user department that defines the rationale for awarding to other than the lowest bidder. A joint review of the bid by the user department and the Purchasing Department may be appropriate and the low bidder must be given the opportunity to address the Court prior to bid award.

The Director of Purchasing shall recommend contract award to the Commissioners Court in open session. The Court shall (1) award the contract to the responsible bidder who submitted the lowest and best bid; or (2) reject all bids and publish a new bid.

XVI. Contract Performance/Compliance

The user department is responsible for monitoring and documenting contractor performance and compliance, and providing copies of all documentation of non-compliance and poor performance to the Purchasing Department. The purchasing director

will initiate any necessary corrective action with the vendor, and all correspondence between the county and the vendor should be sent by the purchasing director.

User departments do not have authority to change any contractual terms of the contract. User departments must request any changes through the purchasing director. To enforce contractual terms, documentation of specific non-compliance must be available. Specific dates, locations, examples, etc. must be fully documented by the user department. *Remember, if it isn't documented, it didn't happen.*

XVII. Prevailing Wage Determination for Public Works Contracts

For a contract for a public work awarded by Lubbock County, the county shall determine the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.

XVIII. Conflicts-of-Interest, Nepotism and Misuse of a Public Position.

A. Affirmative Duty to Disclose an Interest and Abstain from Participation.

1. Where a member of the Commissioners' Court, or any other officer of Lubbock County, whether elected, appointed, paid or unpaid, who exercises authority beyond that which is advisory in nature, has a substantial interest in a business entity or real property, that official shall file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the County Clerk of Lubbock County, stating the nature and extent of the interest, and shall abstain from further participation in the matter, if:
 - a) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
 - b) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.
2. If the official is required to file and does file an affidavit under Subsection (1), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.
3. Furthermore, the official may not:
 - a) act as surety for a business entity that has work, business, or a contract with Lubbock County; or

b) act as surety on any official bond required of an officer of Lubbock County.

4. "Substantial Interest"

a) A person has a substantial interest in a business entity if:

(I) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$5,000 or more of the fair market value of the business entity; or

(II) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

d) The relation in c) is defined as the official's spouse, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, and sister-in-law.

5. "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

B. Additional Forbidden Actions, Selected Criminal Statutes

The following actions are forbidden under the Texas Penal Code:

1. Abuse of Official Capacity which includes the misuse of anything of value belonging to the government or violating a law relating to the individuals office or employment.
2. Official Oppression which includes the use of one's official position to deny another the exercise or enjoyment of any right.
3. Misuse of Official Information which includes the use of information not yet released to the public and known by virtue of one's official position, for personal gain, for the gain of another person, or with intent to harm another person.
4. Honorariums and solicitation or acceptance of gifts for the performance of official duties.
5. Perjury, Falsification and Tampering with or Fabricating Evidence and Official Records

XVIX. Lubbock County Purchasing Policy is based on statutes provided for in Texas Local Government Code and Texas Penal Code. All statutes were currently in force at the time of the approval of this policy.

XX. If found to be in the best interest of Lubbock County, any part or portion of this policy may be repealed or changed by an order of the Commissioners' Court. Such action will not affect any other part or portion of this policy.

XXI. Federal Grant Procurement Standards IAW Part 200, OMB Uniform Grant Guidance

§200.318 General Procurement Standards

Note: Lubbock County has elected to postpone implementation of the Uniform Guidance procurement requirements until FY 2017.

- (a) Lubbock County will use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, modified to conform to applicable Federal law and the standards identified in this part.
- (b) Lubbock County will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c) Conflicts of Interest: No 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 Lubbock County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, unsolicited items of nominal value may be accepted. A violation of this section will result in disciplinary action up to and including termination of employment.
- (d) Lubbock County seeks to avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, Lubbock County participates in state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) Lubbock County encourages 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.
- (g) Lubbock County uses value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

- (h) Lubbock County must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (i) Lubbock County will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily 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.
- (j)(1) Lubbock County may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, Lubbock County must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) Lubbock County alone must 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 Lubbock County of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of Lubbock 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.

§200.319 Competition.

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;

- (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (b) Lubbock County conducts 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. Nothing in this section preempts state licensing laws. 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.
 - (c) Lubbock County will ensure that all solicitations:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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 should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
 - (d) Lubbock County must 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. Also, Lubbock County does not preclude potential bidders from qualifying during the solicitation period.

§200.320 Methods of Procurement to be followed.

Lubbock County may use any of the following methods of procurement.

- (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$3000 or \$2000 in the case of a construction bid subject to the Davis-Bacon Act)). To the extent practicable, Lubbock County must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if Lubbock County considers the price to be reasonable.
- (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (\$150,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

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

(2) If sealed bids are used, the following requirements apply:

- (i) 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 publically advertised;
- (ii) 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;
- (iii) 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;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- (v) Any or all bids may be rejected if there is a sound documented reason.
- (d) Procurement by competitive proposals. 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. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (2) Proposals must be solicited from an adequate number of qualified sources;
 - (3) Lubbock County must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - (5) Lubbock County may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- (e) [Reserved]
- (f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
- (1) The item is available only from a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from Lubbock County;
or
 - (4) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

- (a) Lubbock County must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) 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;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) 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; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of Recovered Materials.

Lubbock County and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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; 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.

§200.323 Contract Cost and Price.

- (a) Lubbock County must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, Lubbock County must make independent estimates before receiving bids or proposals.

- (b) Lubbock 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.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for Lubbock County under Subpart E—Cost Principles of this part. Lubbock County may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal Awarding Agency or Pass-through Entity Review.

- (a) Lubbock County must make available, upon request of the Federal awarding agency or pass-through entity, 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. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if Lubbock County desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) Lubbock County must 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:
 - (1) Lubbock County's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) 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;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;
 - (4) 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; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

- (c) Lubbock County is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) Lubbock County may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) Lubbock County may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from Lubbock County that it is complying with these standards. Lubbock County must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding Requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of Lubbock County provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. 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.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract Provisions.

Lubbock County's contracts for procurements using federal grant funds contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.