

TITUS COUNTY
PROCUREMENT POLICY APPLICABLE TO ALL PROCUREMENTS
MADE WITH FEDERAL FUNDS

Adopted June 27, 2022

General Procurement Standards

All procurements made by the COUNTY OF TITUS ("COUNTY") involving the expenditure of Federal funds must be conducted in accordance with the procedures set forth in this Policy. This Policy is in accord with all applicable Federal, State, and local government statutes and regulations, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. §§ 200.318 to 200.327.

It is the policy of the County to conduct all procurements in the highest ethical manner, and in accordance with all applicable laws and regulations. To the extent required by law and regulation, and the maximum extent practical, The County will conduct all procurement transactions in a manner providing full and open competition, consistent with the standards set forth 2 C.F.R. § 200.319.

Subject to specified cost thresholds and documented delegation of authority, all procurements will be reviewed by the County Attorney, the County Auditor, and the County Judge to ensure compliance with this Policy.

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

The County will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. 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 the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the County.

The county's procedures will avoid acquisition of unnecessary or duplicative items. Consideration will 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.

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the county will enter into state and local inter- governmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

The county will use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

The county will strive to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

The county will 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.

The 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.

The 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:

- The actual cost of materials; and
- Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

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, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

The county will 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 the county of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the 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.

COMPETITION

All procurement transactions for the acquisition of property or services required under a Federal award will be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

The county will 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. 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.

I. SOLICITATIONS

Procurements subject to this Policy will be made on the basis of a written solicitation. after careful consideration by County Staff (with, as applicable, the support of a selection committee) of the needs of County and available resources. The written procedures in this Policy are intended to ensure that all solicitations meet the following Federal requirements as well as contracting best practices.

A. Clear Description

The solicitation must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. This description should include a written statement of work. 2 C.F.R. § 200.319(d)(1).

B. Nonrestrictive Specification

The description of the technical requirements must not contain features that unduly restrict competition. 2C.F.R. § 200.319(d)(1).

C. Qualitative Requirements

The description of the technical requirements 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. Product specifications should be limited to essential specifications only.

a. Brand Name or Equal

When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, "brand name or equal" descriptions may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated. The need for a "brand name or equal" specification should be documented.

b. Preference for Performance Specifications

Product or service specifications based on performance, rather than designed specifications, are preferred. A performance specification describes an end result, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. Performance specifications describe *what* the product should be able to do or the services to accomplish, without imposing unnecessarily detailed requirements on *how* to accomplish the tasks.

D. Requirements

The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. All solicitations for competitive proposals must notify offerors that the County reserves the right to award to other than the lowest-priced offeror. Generally, the County will make a best value determination, balancing cost against technical merits, in awarding competitive contracts.

E. Prequalified List

The County will 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, the County will not preclude potential bidders from qualifying during the solicitation period.

F. Type of Federal Funding

The solicitation must acknowledge the source of the Federal funding for the contract, in compliance with the terms of its financial assistance award.

The solicitation should inform prospective contractors that they will need to comply with all applicable Federal Laws, regulations, Executive Orders and requirements affecting the procurement. As appropriate, specific flow-down requirements may be included in the solicitation itself, in any resulting contract, or incorporated by reference.

II. METHODS FOR PROCUREMENT

All procurements made under this policy shall avoid acquiring unnecessary or duplicative items (2 CFR 200.318(d)). Conducting multiple steps in monitoring invoices received ensures avoiding unnecessary or duplicative items. Invoices for grant expenditures will be reviewed by the County Commissioners and the County Judge for potential duplicative items. Once approved the invoice will be sent to the County Auditor. The Auditor's office will then review the invoice an additional time prior to approving for payment.

Procurements shall be made using one of the following methods: (A) Micro-Purchases (B) Small Purchase procedures, (C) Competitive sealed bids, (D) Competitive negotiations, (E) Non-competitive negotiations. All procurements shall be made in accordance with these procedures.

A. Micro-Purchases

Purchases below \$3,000.00 may be awarded without soliciting competitive proposals if the COUNTY considers the price to be reasonable. Efforts will be made to get the lowest and best price, but written records of such efforts are not necessary. Procurements may not be disaggregated for the purpose of falling below the Micro-Purchasethreshold.

B. Small Purchases

Purchases of supplies, equipment and services which cost below **\$50,000** require written supplier estimates but no formal bid is required. The County will solicit a verbal or written response from at least three (3) vendors and will document why the vendor was selected if it is not the lowest priced offeror. If no such responses are available, a statement explaining the procurement will be prepared and filed.

C. Competitive Sealed Bids

The use of sealed bids will be employed when detailed specifications for the goods or services to be procured can be prepared and the primary basis for award is cost. When the cost of a contract, lease or other agreement for materials, supplies, equipment or contractual services, other than those personal (procuring the services of an individual for staff augmentation services) or professional (provided by a degreed, licensed professional, principally engineering, accounting, and legal services), exceeds **\$50,000**, an Invitation for Bids ("IFB") notice will generally be prepared. This notice will be published in the

COUNTY newspaper of record and/or such other places as the County deems appropriate. This notice will appear at least fourteen (14) days before the due date for bid proposals. The County may also solicit sealed bids from responsible perspective suppliers by sending them a copy of such notice. To the extent possible, the County Staff is encouraged to maintain an open Bidders List.

The IFB will include a complete, accurate and realistic specification and description of the goods or services to be procured, any required bid deposit, the amount of a payment bond and bond performance required (if applicable), the location where bid forms and specifications may be secured, the time and place for opening bids, and whether the bid award will be made on the basis of the lowest price or the lowest evaluated price. If the lowest evaluated price is used, the measurable criteria to be used must be stated in the IF B.

Sealed bids will be opened in public at the time and place stated in the IFB. The bids will be tabulated by the tabulator at the time of bid opening. The results of the tabulation and the bid procurements will be examined for accuracy and completeness by the examiner who will make recommendations to the County. In addition, the County shall determine that all firms are responsive and responsible. The County will make the decision as to whom the contract shall be awarded. After the bid award is made by the County, a contract will be prepared for execution by the successful bidder. After the contract is signed, all bid deposits will be returned to all unsuccessful bidders.

The County may cancel an Invitation for Bid or reject all bids if it is determined that such is in the best interests of the County. Bidders will be notified in writing of such cancellation or rejection. The County may allow a vendor to withdraw a bid if requested at any time prior to the bid opening. Bids received after the time set for bid opening shall be returned to the vendor unopened. Bids which do not accept all terms and conditions of the IFB shall be deemed to be non-responsive and will be rejected. Any changes to the bidding terms and conditions shall be communicated to all bidders, and all bidders will have an equal chance to submit a bid responsive to those changed terms and conditions.

D. Competitive Negotiations

The County will use competitive negotiations, regardless of contract amount, upon a written determination that either of the following conditions apply:

- a. Specifications cannot be made specific enough to permit the award of a bid on the basis of either the lowest bid or the lowest evaluated bid price (in other words, sealed bidding is not feasible); or
- b. The services to be procured are professional (provided by a degreed, licensed professional, principally engineering, accounting, and legal services) in nature.

Competitive negotiations will proceed as follows:

1. Proposals will be solicited through advertisement in the County newspaper of record and/or such other places as the County deems appropriate.

Additionally, a Request for Proposal (RFP) may be prepared and mailed, emailed, or faxed to qualified vendors. The RFP will describe services needed and identify the factors to be considered in the evaluation of proposals and the relative weights assigned to each selection factor. The RFP will also state where further details regarding the RFP may be obtained. The RFP will call attention to the applicable regulations. Requests for proposals will always include cost as a selection factor.

2. Award must be made to the offeror whose proposal is determined in writing by the County to be the most advantageous to the County with price and other factors considered. This evaluation and award process contemplates a balancing of cost and technical merit in arriving at a determination as to which proposal provides the best value to the County. Evaluations must be based on the factors set forth in the Request for Proposal and a written evaluation of each response prepared. The selection committee may contact the firms regarding their proposals for the purpose of clarification and record in writing the nature of the clarification. If it is determined that no acceptable proposal has been submitted, all proposals may be rejected. New proposals may be solicited on the same or revised terms, or the procurement may be abandoned.

For the procurement of certain professional services, an alternative to RFPs may be used. The County may publish a Request for Qualifications. RFQ's are handled in a similar method to RFP's with the exception that cost is not a factor in the initial evaluation. The selection committee will evaluate the responses and rank them by comparative qualifications. The highest scoring person or firm will be contacted, and the County will negotiate cost. If the County is unable to negotiate a satisfactory cost arrangement, the second highest scoring person or firm will be invited to negotiate. The County will maintain a written record of all such negotiations.

E. Noncompetitive Negotiations

The COUNTY requires competitive bids for purchases of goods or services (including consulting services) over \$50,000; however, some exceptions apply.

In some circumstances, when competition cannot be obtained or the situation necessitates the required number of competitive bids to be reduced, a Sole Source or Reduction Justification Form must be submitted. The following information is a guide for requesting the waiver or reduction of competitive bids on RFPs for goods or services greater than \$50,000. The County may purchase goods and services through non-competitive negotiations when it is determined in writing by the County that competitive negotiation or bidding is not feasible and that:

1. SOLE SOURCE DEFINITION AND CRITERIA

A single supplier that is exclusively capable of meeting the County's requirements within the time available, including emergency and other situations, which preclude conventional planning and processing. These situations include:

- a. **One-of-a-Kind/Specialized-** the commodity or service has no competitive product or must meet specialized seaport, boat or marine requirements, or specialized professional or technical services, and is available from only one supplier.
- b. **Compatibility** - the commodity or service must match an existing brand of equipment for compatibility and is available from only one vendor.
- c. **Replacement Part** - the commodity is a replacement part for a specific brand of existing equipment and is available from only one supplier.
- d. **Delivery Date-** only one supplier can meet necessary delivery requirements.
- e. **Emergency** - URGENT NEED for the item or service does not permit soliciting competitive bids; including purchases needed to address major facility failures, damages due to disasters, or purchases necessary to address immediate safety and security issues.
- f. Only one satisfactory proposal is received through RFP or RFQ
- g. The Federal or State awarding agency has authorized the particular type of noncompetitive negotiation.

Procurement by noncompetitive negotiation requires the strictest attention to the observation of impartiality toward all suppliers. The County must approve all procurements by non-competitive negotiation when only one supplier is involved or only one bid or response to an RFP/RFQ is received.

F. Bids will be accepted only from those contractors who have a proven record of ability to successfully complete the scope of work being bid. References will be requested along with the contractor's bid proposal. Any contractors submitting a bid must produce (along with his/her bid documents) written proof of liability insurance and worker's compensation coverage. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources in awarding contracts.

III. CONTRACTS

Generally, all procurement in excess of the Simplified Acquisition Threshold will be memorialized and supported by a written contract. Where it is not feasible or is impractical to prepare a contract, a written finding to this effect will be prepared and some form of

documentation regarding the transaction will also be prepared.

A. All contracts will contain language which allows the County the opportunity to cancel any contract for cause. Said cause shall include (but not be limited to) demonstrated lack of ability to perform the work specified, unwillingness to complete the work in a timely fashion, cancellation of liability insurance or worker's compensation, failure to pay suppliers or workers, unsafe working conditions caused by the contractor, failure to comply with Davis-Bacon wage laws (where applicable), failure to keep accurate and timely records of the job, or failure to make those records available to the County (on request) or any other documented matter which could cause a hardship for the County if a claim should arise or the work not be completed on schedule at the specified cost.

B. All contacts will contain a termination for convenience provision, which allows the COUNTY to cancel the contract without fault on the part of the contractor. In the event of a termination for convenience, the contractor will receive reimbursement and/or pro-rate payment for costs and work done until the point of termination, but not anticipated profits on the work that was cancelled. The termination provision will specify the procedures for the contractor to submit a claim for termination costs.

C. 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. § 60-1.3 must contain the applicable contract clauses described in Appendix 11 to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth in 2 C.F.R. §200.326. These provisions will be provided to all bidders

IV. DOCUMENTATION

All source documents supporting any given transaction (receipts, purchase orders, invoices, RFP/RFQ data and bid materials) will be retained and filed in an appropriate manner. Where feasible, source documents pertinent to each individual procurement shall be separately filed and maintained. Where it is not feasible to maintain individual procurement files, source documents will be filed and maintained in a reasonable manner (examples include chronologically, by vendor, by type of procurement, etc.). Whatever form of documentation and filing is employed, the purpose of this section is to ensure that a clear and consistent audit trail is established. At a minimum, source document data must be sufficient to establish the basis for selection, basis for cost, (including the issue of reasonableness of cost), rationale for method of procurement and selection of contract type, and basis for payment.

V. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

All necessary affirmative steps will be taken and documented to solicit participation of small and minority businesses, women's business enterprises, and labor surplus area firms as referenced in 2 C.F.R. §200.321. Where possible and feasible, delivery schedules will be established, and work will be subdivided to maximize participation by small businesses or minority- or women-owned businesses. Subdivided components will be bid as a separate

contract. A list of locally owned, minority-owned, female-owned, and small businesses and also minority businesses located within the trade region shall be used when issuing IFBs, RFPs and RFQs. This list shall also be consulted when making small purchases. The COUNTY will use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce when appropriate. The successful bidder will be required to use these same criteria in selection of suppliers and subcontractors whenever possible.

VI. DOMESTIC PREFERENCES FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the County will, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) as set forth in 2 C.F.R. §200.322. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

VII. PROCUREMENT OF RECOVERED MATERIALS

The County and its contractors will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as set forth in 2 C.F.R. §200.323. 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.

VIII. CONTRACT COST AND PRICING

- A.** The County will 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, the County must make independent estimates before receiving bids or proposals.
- B.** The County will 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 the County under subpart E of this part. The County will 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.

IX. FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW

- A. The County will 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 the 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. The County will 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) The 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. The 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) The 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) The 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 the County that it is complying with these standards. The County must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

X. 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 the 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 requirements 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.

XI. CONTRACT PROVISIONS

Federally funded contracts are subject to a variety of required statutes, regulations, and contract clauses. The County's contracts will contain the applicable provisions described in appendix II to part 200 as applicable. While it is the responsibility of bidders and offerors to be aware of and comply with those requirements, County staff shall include applicable requirements in all County contracts to the maximum extent possible, either in full text, via addendum or attachment, or by reference. The list below is not exhaustive, and other provisions may apply based on the type of work being performed and the dollar amount of the contract. The provisions below are common to many covered contracts:

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors

violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the County including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 FR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities 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 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). 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. The non-Federal entity must 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. The non-Federal entity must 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 (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 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.C.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.

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient 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," the recipient or subrecipient must comply with the requirements of 37 CFR 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.
- (G) Clean Air Act (42 U.S.C. 7401-7671) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CPR part 1986 Comp., p. 189) and 12689 (3 CPR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 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.C. 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.

XI. CODE OF CONDUCT

a. Conflict Of Interest

No County member, employee, consultant, elected official, appointed official or designated agent of the County will take part or have an interest in the award of any procurement transaction if a conflict of interest, real or apparent, exists. A conflict of interest occurs when the official, employee or designated agent of the County, partners of such individuals, immediate family members, or an organization which employs or intends to employ any of the above has a financial or other interest in any of the competing firms or will otherwise benefit financially or otherwise from a contract award.

No County member, employee or designated agent of the County may acquire a financial interest in or benefit in any way from any activity which uses any Federal funding, nor shall they have any interest in any contract, subcontract or agreement for themselves or any family members.

NOTE: These rules apply to all named parties and shall be effective for the period of service and for one year after leaving said position (or office, in the case of elected officials).

b. Acceptance of Gratuities

No County member, employee or designated agent of the County shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, subcontractors, or potential subcontractors.

c. Penalties

Any County member, employee or designated agent of County who knowingly and deliberately violates the provisions of this code will be open to civil suit by the County without the legal protection of the County. Furthermore, such a violation of these procurement standards is grounds for dismissal by the County (if an employee) or such sanctions as available under the law (if an elected official).

Any contractor or potential contractor who knowingly and deliberately violates the provisions of these procurement standards will be barred from future transactions with the County.

Adopted by the Titus County Commissioner's Court, this 27
day of June 2022.

Brian Lee

Brian Lee, County Judge

ATTESTED: Joan Newman
Joan Newman, County Clerk

