

**PROCUREMENT POLICY FOR  
EXPENDITURE OF FEDERAL FUNDS  
NEWTON COUNTY, TEXAS**

Revised and adopted June 13, 2022

**PURPOSE**

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods, services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

**FINANCIAL MANAGEMENT**

[§200.302]

The financial management of the County must provide for the following [§200.302(b)]:

1. Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and the name of the pass-through entity, if any.
2. Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.
3. Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
4. Effective control over, and accountability for, all funds, property and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes.
5. Comparison of expenditures with budget amounts for each Federal award.
6. Written procedures to implement the requirements of §200.305.
7. Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award.

**Determining Allowability of Costs**

Grantees are required to have written procedures for determining the *allowability* of costs charged to Federal grants. 2 CFR § 200.302(b)(7). All costs must be allowable under the federal cost principles in 2 CFR Part 200, Subpart E, and under the terms and conditions of the specific Federal award.

Expenditures must be aligned with budgeted items in the approved grant application. Certain changes or variations from the approved budget and grant application need prior approval from the awarding agency.

When determining how the County will spend grant funds, the specific grant administrators will review the proposed cost to determine whether it is an allowable use of Federal grant funds *before* obligating and spending those funds on the proposed goods or services. All expenditures made with Federal funds must meet the standards outlined in 2 CFR Part 200. The following factors must be considered when making an allowability determination.

#### **Factors Affecting Allowability of Costs**

In general, the County must consider the following elements when determining the allowability of a cost. In accordance with the Federal cost principles, all costs budgeted and charged to a federal grant must be:

##### ***Necessary and Reasonable for the performance of the federal award.***

*Reasonable Costs:* 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 to incur the cost was made. "Reasonable" means that sound business practices were followed, and purchases were comparable to current market prices.

A cost can be *reasonable* if it meets *all* of the following conditions:

- Prudence was used in making the decision to incur the cost, considering the person's responsibilities to the County, its employees, the public, and the Federal government.
- It is necessary to carry out the objectives of the grant program or is recognized as an ordinary cost to operate the organization.
- The County applied sound business practices; arm's-length bargaining (i.e., the transaction was with an unrelated third party); Federal, state, and other laws and regulations; and the terms and conditions of the award in making the decision.
- The price is comparable to that of the current fair market value for equivalent goods or services.
- There were no significant deviations from the established practices of the organization which may unjustifiably increase the cost. 2 CFR § 200.404

*Necessary Costs:* While 2 CFR § 200.404 does not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, *necessary* is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. It means it is vital or required in order to meet the objectives of the grant or for the grant to be successful. *Necessary* does *not* mean "nice to have," which means it is *not necessary* to accomplish the objectives of the program in that it is not vital or required for the success of the program.

A key aspect in determining whether a cost is *necessary* is whether the County can demonstrate that the cost addresses an existing need and can prove it.

When determining whether a cost is *necessary*, the County considers:

- Whether the cost is needed for the proper and efficient performance of the grant program;
- Whether the cost is identified in the approved budget or application;
- Whether there is a County benefit associated with the cost;

- Whether the cost aligns with identified needs based on results and findings from a needs assessment; and
- Whether the cost addresses program goals and objectives and is based on program data.

**Allocable to the federal award.** A cost is *allocable* to the Federal award if the goods or services involved are *chargeable* or *assignable* to the Federal award *in accordance with the relative benefits received*. This means that the Federal grant program derived a benefit in proportion to the funds charged to the program. 2 CFR § 200.405. The County must be able to demonstrate how a particular cost benefits the specific population being served in the grant.

**Consistent with policies and procedures** that apply uniformly to both Federally-financed and other activities of the County.

**Conform to any limitations or exclusions set forth as cost principles** in 2 CFR Part 200, Subpart E, or in the terms and conditions of the federal award.

**Consistent treatment.** A cost cannot be assigned to a Federal award as a *direct* cost if any other cost incurred for the same purpose in like circumstances has been assigned as an *indirect* cost under another award.

**Adequately documented.** All expenditures must be properly documented with original source documentation that is clearly written and maintained on file (either electronically or on paper) with accounting records. Documentation includes purchase orders/requisitions, invoices, receipts, verification of receipt of goods and services, travel authorizations and vouchers, contracts, time-and-effort records, copies of checks, bank statements, etc. Expenditures that are not supported by source documentation cannot be charged to the grant.

**Determined in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in 2 CFR Part 200.**

**Not included as a match or cost-share of another federal program,** unless the specific Federal program authorizes Federal costs to be treated as such. Some Federal program statutes require the grantee to contribute a certain amount of non-federal resources to be eligible for the Federal program.

**Incurred during the approved budget period.**

**The net of all applicable credits.** The term "applicable credits" refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the Federal award. Typical examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges, such as credits. To the extent that such credits accruing to or received by the County relate to the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate. 2 CFR § 200.406.

2 CFR Part 200's cost guidelines must be considered when Federal grant funds are expended. Federal rules require state- and County-level requirements and policies regarding expenditures to be followed as well. For example, state and/or County policies relating to travel or equipment may be narrower or more restrictive than the Federal rules. In this case, the stricter State and/or County policies must be followed.

## **Requesting Prior Written Approval**

For certain costs that it may be difficult to determine reasonableness or allocability, the County may seek *prior written approval* for "special or unusual costs" not identified in the regulations in advance of the incurrence of such costs. This may prevent future disallowance or dispute based on "unreasonableness" or "non-allocability." Prior written approval should include the timeframe or scope of the agreement. 2 CFR § 200.407

The specific grant administrators will determine if and when the County should seek prior written approval for a certain cost prior to incurring the cost. Federal grant funds will not be expended for any costs that require prior written approval in accordance with 2 CFR 200, Subpart E, or the grant application instructions, if such prior written approval was not properly secured.

## **Selected Items of Cost - 2 CFR Part 200, Subpart E**

2 CFR Part 200, Subpart E, examines the allowability of some specific cost items (commonly referred to as *Selected Items of Cost*) at 2 CFR §§ 200.420 -.476. These cost items are listed in the chart below along with the citation where it is discussed. Please do not assume that an item is allowable because it is specifically listed, as it may be *unallowable* despite its inclusion in the selected items of cost section, or it may be allowable only under certain conditions, including prior written approval.

The expenditure may be *unallowable* for a number of reasons, including: the express language of the regulation states the item is unallowable; the terms and conditions of the grant deem the item unallowable; or State/local restrictions dictate that the item is unallowable or allowable only under certain conditions or circumstances. The item may also be unallowable because it does not meet one of the factors affecting allowability of costs, such as being reasonable because it is considered too expensive. If an item is unallowable for any of these reasons, the County does not use Federal funds to purchase it.

The selected items of cost addressed in 2 CFR Part 200, Subpart E include the following (in alphabetical order):

Item of Cost	Citation of Allowability Rule
Advertising and public relations costs	2 CFR § 200.421
Advisory councils	2 CFR § 200.422
Alcoholic beverages	2 CFR § 200.423
Audit services	2 CFR § 200.425
Bad debts	2 CFR § 200.426
Bonding costs	2 CFR § 200.427
Collection of improper payments	2 CFR § 200.428
Compensation - personal services	2 CFR § 200.430
Compensation - fringe benefits	2 CFR § 200.431
Conferences	2 CFR § 200.432
Contingency provisions	2 CFR § 200.433
Contributions and donations	2 CFR § 200.434
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	2 CFR § 200.435
Depreciation	2 CFR § 200.436
Employee health and welfare costs	2 CFR § 200.437
Entertainment costs	2 CFR § 200.438
Equipment and other capital expenditures	2 CFR § 200.439
Exchange rates	2 CFR § 200.440
Fines, penalties, damages and other settlements	2 CFR § 200.441
Fund raising and investment management costs	2 CFR § 200.442
Gains and losses on disposition of depreciable assets	2 CFR § 200.443
General costs of government	2 CFR § 200.444
Goods and services for personal use	2 CFR § 200.445
Idle facilities and idle capacity	2 CFR § 200.446
Insurance and indemnification	2 CFR § 200.447
Intellectual property	2 CFR § 200.448
Interest	2 CFR § 200.449
Lobbying	2 CFR § 200.450
Losses on other awards or contracts	2 CFR § 200.451
Maintenance and repair costs	2 CFR § 200.452
Materials and supplies costs, including costs of computing devices	2 CFR § 200.453

Memberships, subscriptions, and professional activity costs	2 CFR § 200.454
Organization costs	2 CFR § 200.455
participant support costs	2 CFR § 200.456
Plant and security costs	2 CFR § 200.457
Pre-award costs	2 CFR § 200.458
Professional services costs	2 CFR § 200.459
Proposal costs	2 CFR § 200.460
Publication and printing costs	2 CFR § 200.461
Rearrangement and reconversion costs	2 CFR § 200.462
Recruiting costs	2 CFR § 200.463
Relocation costs of employees	2 CFR § 200.464
Rental costs of real property and equipment	2 CFR § 200.465
Selling and marketing costs	2 CFR § 200.467
Specialized service facilities	2 CFR § 200.468
Student activity costs	2 CFR § 200.469
Taxes (including Value Added Tax)	2 CFR § 200.470
Telecommunications and video surveillance costs	2 CFR § 200.471
Termination costs	2 CFR § 200.472
Training and education costs	2 CFR § 200.473
Transportation costs	2 CFR § 200.474
Travel costs	2 CFR § 200.475
Trustees	2 CFR § 200.476

Likewise, it is possible for the State and/or County to put additional requirements on a specific item of cost. Under such circumstances, the stricter requirements must be met for a cost to be allowable. Accordingly, employees consult federal, State and County requirements when spending Federal funds.

#### *Other Considerations for Allowability*

In order for a cost to be allowable, the expenditure must also be allowable under the applicable *federal program statute*.

Most Federal programs also contain the *supplement, not supplant* requirements. In general, this means that the County cannot use federal grant funds to pay for a cost or activity that is usually supported by state or local funds.

In summary, for a cost to be allowable under a Federal grant program, the County ensures it meets *all* of the following conditions. A cost that does not meet all of these conditions could be questioned during an audit or monitoring visit and could require repayment to the awarding agency. The cost must be:

- *reasonable* in cost (as described above)
- *necessary* to accomplish the objectives of the grant program (as described above)
- based on an identified need, concern, or area of weakness within the grant program
- appropriate under the authorizing program statute
- consistent with the underlying needs of the program in that it benefits the intended population for which the funds are appropriated

- *allocable* to the grant based on the relative benefits received (as described above)
- authorized or not prohibited under state or local laws or regulations
- consistent with policies, regulations, and procedures that apply to all activities, including other grants and state and local activities
- treated consistently as either a *direct* cost or as an *indirect* cost
- determined in accordance with GAAP
- not used to meet cost sharing or matching requirements of another federal grant (unless specifically permitted in the other program statute or regulations)
- consistent with the terms and conditions of the grant award
- budgeted in the approved grant application
- adequately documented with appropriate supporting original source documentation
- the net of any applicable credits such as rebates or discounts
- allowable under the federal cost principles
- in most cases, supplemental to the activities normally conducted by the county (i.e., supplement, not supplant)

County personnel responsible for spending Federal grant funds and for determining allowability must be familiar with the Part 200 selected items of cost section. County employees are required to follow these rules when charging these specific expenditures to a Federal grant.

Newton County will monitor and ensure timely and quarterly submissions of reimbursement requests to granting agencies.

#### *Invoices*

The invoice is an itemized statement of merchandise or a service, shipped or delivered to an end user and is a guide for the County in settling financial obligation incurred. The invoice must be reviewed for correctness, and any differences should be resolved with the vendor immediately and always before forwarding for payment.

All invoices must be attached to a completed requisition for payment and delivered to the Auditor's Office.

All invoices should contain the following information:

The invoice number.

The invoice date.

A list of merchandise received or services performed.

The prices, terms, quantities, and other pertinent information.

The County must ensure the submission of invoices follow funding agency policies for cost principles and timely and quarterly RFP submissions in order to minimize time lapses between receiving invoices and requesting reimbursement from the applicable funding agency.

### **GENERAL PROCUREMENT STANDARDS**

*[§ 200.318]*

**A. Responsibility and Oversight***[§ 200.318(b)J.* Newton County staff is responsible for developing all contracts in accordance with the policy, applicable state statutes, and in conformance with applicable Federal Law and Uniform Guidance Standards, to ensure a full awareness and understanding by affected employees.

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

**B. Conflicts of Interest** [§ 200.318(c)(1)]. No employee, officer, or agent of Newton County shall 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 that 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 Newton County shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the financial interest is not substantial or the gift is an unsolicited item of nominal value. Disciplinary actions shall be applied for violations of such standards by officers, employees, or agents of Newton County.

**C. Procurement Under Federal Awards**[§ 200.318(d) through (k)]. Procurement of goods and services whose costs are charged to federal awards received by Newton County shall be subject to the following policies:

1. Newton County shall avoid acquisition of unnecessary or duplicative items. When feasible, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. [§ 200.318(d)J].
2. Where appropriate, Newton County will make an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. [§ 200.318(d)J].
3. Newton County may consider entering into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.[§ 200.318(e)].
4. Newton County may use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.[§ 200.318(f)].
5. Newton County may use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reduction. [§ 200.318(g)J].
6. Newton County shall 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. [§ 200.318(h)].
7. Newton County shall 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. [§ 200.318(i)].
8. Newton County may use time and material type of contracts only after the department director determines that no other contract is suitable. Time and material contracts shall have a "not to exceed price" where the contractor exceeds at its own risk. Further, the department director shall assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. [§ 200.318(j)(1) and (2)].
9. Newton County 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. [§ 200.318(k)].



## **COMPETITION**

*[§ 200.319]*

**A. Full and Open Competition***[§ 200.319(a) and (b)]*. Newton County shall conduct all procurement transactions in a manner providing full and open competition and which is consistent with the standards of 2 C.F.R. § 200.319 and 320. 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 procurements; and
7. Any arbitrary action in the procurement process.

**B. Contractor's Conflict of Interest** *[§ 200.319(b)]*. Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements.

**C. Geographic Preference***[§ 200.319(c)]*. When federal funds are involved, Newton County prohibits the use of statutorily or administratively imposed state or local 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. Notwithstanding the foregoing, 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.

**D. Procurement Standards***[§ 200.319(d)]*. As applicable, all solicitation for projects using federal funds shall:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that 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, shall 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 that must be met by offers must be clearly stated; and
2. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**E. Prequalification Lists**[§ 200.3 J 9(e)J. All prequalified lists of persons, firms, or products used in acquiring goods and services shall be current and include enough qualified sources to ensure maximum open and free competition. Newton County shall not preclude potential bidders from qualifying during the solicitation period.

**F. Noncompetitive Procurements**[§ 200.319(l)}. Newton County shall only award noncompetitive procurements in accordance with 2 C.F.R. § 200.320 and the "Methods of Procurement" section of this policy.

## **METHODS OF PROCUREMENT**

[§ 200.320}

Newton County shall use one of the following methods of procurement for the acquisition of property or services required under a federal award or sub-award.

### **A. Informal Procurement Methods**[§ 200.320(a)j.

1. Micro-purchases [§ 200.320(a)(l)J. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act. Procurement by micro-purchase shall meet the following guidelines:

i. Distribution [§ 200.320(a)(J)(i)}. To the extent practicable, Newton County will distribute micro-purchases equitably among qualified suppliers.

ii. Micro-purchase Awards [§ 200.320(a)(l)(ii)}. Micro-purchases may be awarded without soliciting competitive quotations if Newton County considers the price to be reasonable based on research, experience, purchase history, or other applicable information.

3. Small Purchases[§ 200.320(a)(2)}. Procurement by small purchase is the acquisition of supplies or services where the aggregate dollar amount is more than the micro-purchase threshold (*i.e.* \$10,000) but does not exceed \$250,000 or \$750,000 in the case of acquisitions used to facilitate defense against or recovery from cyber-attack. Procurement by small purchase shall meet the following guideline:

i. When using the small purchase method of procurement, Newton County shall obtain price or rate quotations from an adequate number of qualified *sources*[§ 200.320(a)(2)(i)J.

**B. Formal Procurement Methods**[§ 200.320(b)}. When the value of the procurement for property or services under a federal financial assistance award exceeds the small purchase threshold, Newton County shall use one of the formal procurement methods below.

1. Sealed Bids[§ 200.320(b)(l)J. The sealed bid procurement method is one in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the lowest responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids. Generally, the sealed bid method is the preferred method for procuring construction.

i. For sealed bidding to be feasible, the following conditions should be present [§ 200.320(b)(l)(i)}:

(a) A complete, adequate, and realistic specification or purchase description.

- (b) Two or more responsible bidders that are willing and able to compete effectively for the business; and
- (c) The procurement lends itself to a firm fixed price contract and the selection of successful bidder can be made principally on the basis of price.

ii. If sealed bids are used, the following requirements shall apply[§ 200.320(b)(l)(ii)]:

- (a) Bids shall be solicited from an adequate number of qualified sources, providing sufficient response time before the date set for opening the bids;
- (b) The invitation for bids shall be publicly advertised;
- (c) The invitation for bids, which shall include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond;
- (d) All bids shall be publicly opened at the time and place prescribed in the invitation for bids;
- (e) A firm fixed price contract award shall 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 shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (f) Any or all bids may be rejected if there is a sound documented reason.

(2) Proposals[§ 200.320(b)(2)}. The proposal procurement method is one in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. If sealed bids are used, the following requirements shall apply:

- (i) Requests for proposals shall be publicized and identify all evaluation factors and their relative importance[§ 200.320(b)(2)(i)];
- (ii) Proposals shall be solicited from an adequate number of qualified sources [§ 200.320(b)(2)}
- (iii) Any response to publicized requests for proposals shall be considered to the maximum extent practical[§ 200.320(b)(2)(i)];
- (iv) The department responsible for issuing the request for proposal shall have a written method for conducting technical evaluations of the proposals received and for selecting recipients[§ 200.320(b)(2)(ii)];
- (v) Contracts shall be awarded to the responsible firm whose proposal is most advantageous to Newton County, with price and other factors considered[§ 200.320(b)(2)(iii)]; and
- (vi) Newton County may use the competitive proposal procedure 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. This method, where price is not used as a selection factor, can only be used in the procurement of A/E

professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed *project* [§ 200.320(b)(2)(iv)].

**C. Noncompetitive Procurement.** [§ 200.320(c)}. Noncompetitive procurement shall be used only if one or more of the following circumstances apply:

- I. The item is available only from a single source;
2. Public exigency or emergency 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 Newton County; or
4. After solicitation of a number of sources, competition is determined inadequate.

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

[§ 200.321]

Newton County shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include the following:

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.

**DOMESTIC PREFERENCE**

[§ 200.322]

To the extent consistent with law, Newton County shall, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section shall be included in all contracts and purchase orders for work or products under a federal award.

## RECOVERED MATERIALS

[§ 200.323]

Newton County and its contractors shall 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 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; 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. The decision not to procure such items shall be based on a determination that such procurement items: (a) are not reasonably available within a reasonable period of time; (b) fail to meet the performance standards set for the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or (c) are only available at an unreasonable price.

## CONTRACT COST AND PRICE

[§ 200.324]

**A. Cost Analysis**[§§ 200.324(a) and (c)]. Newton County shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold as defined in 2 C.F.R. § 200.1 and 48 C.F.R. Part 2, subpart 2.1 ("Simplified Acquisition Threshold") including contract modifications. The method and degree of analysis shall be dependent on the facts surrounding the particular procurement situation, but as a starting point, Newton County shall make independent estimates before receiving bids or proposals. Costs or prices based on estimated costs for contracts under the federal award shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for Newton County under 2 C.F.R. Part 200, subpart E ("Cost Principles"). Newton County may reference its own cost principles that comply with the federal cost principles.

**B. Profit**[§ 200.324(b)]. Newton County shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration shall 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. Procurement by Cost Plus Percentage**[§ 200.324(d)]. Newton County shall not use either the "cost plus a percentage of cost" or the "percentage of construction cost" method of contracting.

## AGENCY REVIEW

[§ 200.325]

**A. Technical Specifications**[§ 200.325(a)]. Newton County shall 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.

**B. Pre-procurement Review**[§ 200.325(b)]. Newton County shall make available upon request for pre-procurement review by the federal awarding agency or pass-through entity procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

1. Newton 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.

### **BONDING**

*[§ 200.326)*

For construction or facility improvement contracts that exceed the Simplified Acquisition Threshold, Newton County shall require, at a minimum, the following:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall 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 *[§ 200.326(a)J*;
2. A performance bond from the contractor for 100 percent of the contract price. The "performance bond" shall be executed in connection with the contract to secure fulfillment of all the contractor's requirements under such contract *[§ 200.326(b)J*; and
3. A payment bond from the contractor for 100 percent of the contract price. The payment bond shall be executed in connection with the 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(c)J*.

### **CONTRACT PROVISIONS**

*[§ 200.327)*

As applicable, contracts made by Newton County, along with all related subcontracts, shall contain the following provisions:

**A. Remedies** *[§ 200 Appendix II (A)J*. All contracts in excess of the Simplified Acquisition Threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such sanctions and penalties as appropriate.

**B. Termination** *[§ 200 Appendix II (B)J*. All contracts in excess of \$10,000 shall contain suitable provisions for termination for cause and for convenience, including the manner by which termination shall be effected and the basis for settlement.

**C. Equal Employment Opportunity** *[§ 200 Appendix II (C)J*. 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 Equal Employment Opportunity," and as implemented by regulations at 41 C.F.R. 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) [§ 200 Appendix II (DJ)].** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by Newton County shall 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, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors shall 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. Additionally, contractors shall be required to pay wages not less than once a week. Newton 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 shall be conditioned upon the acceptance of the wage determination. Newton County shall report all suspected or reported violations to the federal awarding agency. The contracts shall 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 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"). Newton County shall report all suspected or reported violations of the Copeland "Anti-Kickback" Act to the federal awarding agency.

**E. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708) [§ 200 Appendix II (E)].** Where applicable, all contracts awarded by Newton County in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). The requirements of 40 U.S.C. § 3704 shall be applicable to construction work and shall provide that no laborer or mechanic is required to work in surroundings or under working conditions that 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 [§ 200 Appendix II (F)]** J. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and Newton 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," Newton 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.

**G. Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 -1387), as Amended [§ 200 Appendix II (G)]** J. Contracts in excess of \$150,000 shall contain a provision that requires the contractor 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 shall 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) [§ 200 Appendix II (H)].** Newton County shall not make a contract award to any party listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension."

**I. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) [§ 200 Appendix II (I)].** Contractors that apply or bid for an award exceeding \$100,000 shall file the required Byrd Anti-Lobbying certification. Each tier shall certify 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 shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

**J. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment [§ 200 Appendix II (K)].** Newton County shall not procure or enter into a contract to procure equipment, services, or systems that use telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as a substantial or essential component of any system, or as critical technology as part of any system.. Further, Newton County shall not procure or enter into a contract to procure video surveillance or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Additionally, Newton County shall not procure or enter into a contract to procure video surveillance equipment or telecommunications or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Adopted by the Newton County Commissioners Court, this 13<sup>th</sup> day of June, 2022.