



COUNCIL AGENDA STATEMENT

Meeting Date: May 14, 2024
To: Honorable Mayor and City Councilmembers
From: Steven Williams, City Attorney

Agenda Item: **Resolution 2024-41**, A Resolution of the City Council of the City of Marathon, Florida, Adopting The Attached City of Marathon Federal Funding Purchasing Policy as “Exhibit A” and Title 2 Code Of Federal Regulations Sections 200.317 Through 200.327 As “Exhibit B”; Authorizing The City To Implement This Resolution As Provided Herein; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

To diligently comply with all Federal regulations and to enhance the City’s ability to timely and expeditiously seek federal reimbursement related to declared emergencies, it is in the best interest of the City and of the community to adopt a Federal Funding Purchasing Policy. In addition, and to ensure compliance with the Federal regulations, it is in the best interest to also adopt the provisions of Title 2 Code of Federal Regulations Sections 200.317 through 200.327. This Resolution adopts both above-referenced documents.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not Applicable	<u> X </u>	_____

FISCAL NOTE:

RECOMMENDATION:

Approval of Resolution

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2024-41**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ADOPTING THE ATTACHED CITY OF MARATHON FEDERAL FUNDING PURCHASING POLICY AS “EXHIBIT A” AND TITLE 2 CODE OF FEDERAL REGULATIONS SECTIONS 200.317 THROUGH 200.327 AS “EXHIBIT B”; AUTHORIZING THE CITY TO IMPLEMENT THIS RESOLUTION AS PROVIDED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida (the “City”) seeks to diligently comply with all Federal regulations to enhance its ability to timely and expeditiously seek federal reimbursement related to declared emergencies; and

WHEREAS, the City of Marathon is the recipient of certain Federal Grant and Aid Programs; and

WHEREAS, pursuant to Title 2 Code of Federal Regulations (“CFR”) Sections 200.317 through 200.327, any non-federal entity, which includes Florida Municipalities such as the City of Marathon, must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of those sections, for the acquisition of property or services required under a Federal award or sub-award. The non-federal entity’s documented procurement procedures must conform to the procurement standards identified in Sections 200.317 through 200.327 of the CFR; and the non-Federal entities must maintain oversight to ensure that contractors perform accordings to the terms, conditions, and specifications of their contracts and purchase orders; and

WHEREAS, the City finds it is in the best interests of the City and of the community to adopt the attached Federal Funding Purchasing Policy and to further adopt the provisions of 2 CFR Sections 200.317 through 200.327 as applicable to City Procurements which involve Federal Grant and Aid Programs and/or is being funded in whole or in part by assistance from any federal agency; and

WHEREAS, “Exhibit A” contains the City of Marathon Federal Funding Purchasing Policy, which the City hereby adopts as well as taking notice of and adopting 2 CFR 200.317 through 200.327 (“Exhibit B”), as applicable to federally funded procurements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, and incorporated herein.

Section 2. The City of Marathon hereby adopts the Federal Funding Purchasing Policy attached hereto as “Exhibit A.”

Section 3. The City of Marathon additionally takes notice of and adopts the provisions of 2 CFR Sections 200.317 through 200.327 as may be applicable and as provided in “Exhibit B.”

Section 4. “Exhibit A” and “Exhibit B” shall be publicly available on the City’s website.

Section 5. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14th DAY OF MAY, 2024.

THE CITY OF MARATHON, FLORIDA

Robyn Still, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

Steve Williams, City Attorney



City of Marathon Federal Funding Purchasing Policy

(As Revised 4/11/2024)

"Exhibit A"

MISSION STATEMENT

Purchasing Section City of Marathon Administrative Services

Our mission is to provide quality purchasing and contracting support to all City departments in a timely, cost effective and professional manner. As purchasing professionals:

- *We follow a strict Code of Ethics, avoiding the appearance of and preventing the opportunity for favoritism.*
- *We seek to maximize the purchasing power of the public funds, while promoting fair and open competition.*
- *We strive to create a work environment that demonstrates teamwork, respect, integrity and honest communication.*

FEDERAL FUNDING REQUIREMENTS

This Chapter is provided to ensure that the City of Marathon has and maintains proper policies and procedures as required by federal awards and consistent with 2 Code of Federal Regulations (C.F.R.) Chapter I, Chapter II, Part 200. All procurements must comply with Florida Statutes, rules and procedures as per 2 C.F.R. §§200.318-200.326.

All Contracts and procurements in which federal funds are used shall include the following provisions: [See 2 CFR part 200 for a more detailed description of the federal provisions]

A. Procurement Standards (2 C.F.R. §§200.318-200.326)

1. General Rules

These standards apply to procurement of goods or services using federal funds and program income.

The procurement must comply with Non-Federal Entity/City of Marathon's procurement procedures which reflect applicable State and local laws and regulations, provided that they conform to applicable Federal law and the standards identified in 2 C.F.R. Part 200.

The Requesting Department, via the designated contract manager, must maintain oversight to ensure that contracts perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (2 CFR § 200.318(b))

2. Procurement Documentation:

The City must maintain all procurement records sufficient to detail the history, including all competitive bidding documents and all other documentation relating to the evaluation of the competitive bidding proposals and responses; justification of the award; and approval of the contract price and type. The Requesting Department must comply with the grant procurement requirements or complete either the E.1. or E.2. Procurement Form (*Attachment E.1 for purchases \$10,000 and over*) or *Attachment E.2 for purchases through competitive solicitation, i.e. purchases of more than \$35,000.00*), and submit with the Requisition. If Disaster related, use Disaster Request for Purchase Form (*Attachment E.4*). The E4, E1 or E2 and supporting documents must be submitted to the Finance Department for approval before submitting to the City Council for the contract award. In addition, if Attachment E.3 (Debarred, Suspended or Ineligible Entity Checklist) and/or the Minority Owned Business Declaration are required, include them with the E4 submission to Finance. These documents must be maintained in accordance with Chapter 119, Public Records Law and the Florida Department of State, Division of Library and Information Services, General Records Schedules GS1-SL for State and Local Government Agencies.

While 2 C.F.R. 180.220(b) lists covered transactions as contracts equal or above \$25,000.00 for auditing services; or where prior federal agency approval is given, since the Florida Division of Emergency Management (FDEM) Agreement that provides disaster reimbursement requires this form (See Form E.3.) in all contracts regardless of the amount and since we are already conducting a check on all vendors, this is best practice and will be required on all contracts.

3. Conflict of Interest:

The *City of Marathon Employee Resource Guide* setting forth written standards of conduct, including conflict of interest, and governing the actions of City employees shall be followed at all times. 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 in the contract, has a financial or other interest in or tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the City may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. City Employees, officers or agents that violate the City standards of conduct will be subject to disciplinary actions as set forth in more detail in the Employee Resource Guide. (2 CFR § 200.318(c)(1), 200.318(c)(2))

4. Avoidance of unnecessary or duplicative items:

The Finance Department must review expenditures to avoid the acquisition of unnecessary or duplicative items; consider consolidating or breaking out procurements to obtain a more economical purchase; and where appropriate analyze lease versus purchase alternatives or other analysis to determine the most economical approach. The Finance Department should foster greater economy and efficiency and promote cost-effective use of shared services with the Federal Government and state and local government entities through interlocal agreements or other inter-entity agreements, including use of Federal excess and surplus property in lieu of purchasing new equipment and property. (2 CFR §§200.318(d), 200.318(e), 200.318(f)).

5. Contracts may only be awarded to responsible vendor/contractors:

The City 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, including City laws and policies, record of past performance, and financial and technical resources. The Requesting Department must complete the Debarred, Suspended, or Ineligible Entity Checklist (*Attachment E.3*) (2 C.F.R.200.318(h)).

B. Competition Requirements

1. Full and Open Competition: As per 2 C.F.R. §200.319, and consistent with the *Mission Statement* of this Policy, all procurement transactions must be conducted in a manner providing for full and open competition, which prohibits placing unreasonable requirements, unnecessary experience or excessive bonding on firms in order for them to qualify to do business.

City staff shall ensure that procurement transactions do NOT allow: noncompetitive pricing practices between firms and affiliated companies; noncompetitive contracts to consultants that are no retainer contracts (e.g. out-of-scope work added to the consultant's work retainer); specifying only a "brand name" product instead of allowing "an equal" product; and any arbitrary action in the procurement process. 2 C.F.R. §319(a)

2. Prohibition on Bidding: The contractor that is bidding on the contract cannot be involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals (2 CFR § 200.319(a)).
3. No State or Local Preference*: No preference shall be included in the competitive solicitation or in the procurement transactions (2 CFR § 200.319(b)). *Please note that the RESTORE ACT allows for state preference.
4. Solicitation Requirements: The solicitation shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured, including requirements that must be fulfilled by offerors/vendors and the evaluation factors/criteria, e.g. Identify if price or quality is most important in the solicitation. If the City uses prequalified persons or firms, the contract for services or list must be current and include at least 3 prequalified persons or firms and not preclude any potential bidders from qualifying during the solicitation period. 2 C.F.R. §§319(c)-319(d).

C. Method of Procurement Requirements

As per 2 CFR § 200.320, one of the following methods must be used when procuring goods or services with any federal funds:

1. Formal Procurement -Over \$35,000.00 (2 C.F.R. §200.320)

- a. Sealed Bids: Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. Sealed bidding is the preferred method for procuring construction. [Federal Note: Sealed bidding is generally used where price is the most important evaluation factor for the City.] Contract award under the sealed bidding method of procurement is made to the bidder submitting the lowest priced, responsive and responsible bid.
 - i. Responsive and Responsible Defined: "Responsive" refers to whether the bidder meets all the material requirement of the Request for Bids (RFB)/invitation for bid (IFB), while "Responsibility" refers to 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, records of past performance, and financial and technical resources. [See 2 C.F.R. §200. 318(h)]

- ii. Conditions of Sealed Bids: All of the following conditions must be present to use sealed bids: 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 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 C.F.R. §200.320]
- iii. Requirements for Sealed Bids: If sealed bids are used, the following requirements apply:
 - 1) The City must solicit bids from an adequate number of known suppliers (via the electronic bidding platform and if applicable to a list of suppliers to be provided to the Purchasing Office from the Requesting Department), providing sufficient response time prior to the date set for opening the bids and must be publicly advertised (refer to City of Marathon Code 2-178).
 - 2) The competitive solicitation should include any specifications and pertinent attachments, and define the items or services in order for the bidder to properly respond;
 - 3) Set forth the Time and Place for the bids to be publicly opened;
 - 4) Award a firm fixed price contract in writing to the lowest responsive and responsible bidder;
 - 5) If any bids are rejected, there must be a sound documented reason supporting the rejection. [2 C.F.R. § 200.320]
- iv. Cost or Price Analysis As per 2 CFR §200.324, if the contract amount (including contract modification) exceeds \$150,000.00 the City must perform a cost or price analysis.

A Cost or Price Analysis must be conducted by the Finance Department. C.F.R. §200.324(a).The degree of the analysis depends on the nature of the procurement; however, it should at least start with an independent estimate established before receipt of responses/offers.

Price & Cost Analysis Description:

- a) “Price Analysis” is the process of examining and evaluating proposed price without evaluating its separate cost elements and proposed profit. Techniques include comparison of amounts from responses received, comparison of proposed prices to historical prices paid, comparison with published price lists, comparison to your independent estimate. Price Analysis is the preferred method to be used by the Requesting Department.
- b) “Cost Analysis” is the review and evaluation of any separate cost elements and profit or fee in an respondents/offers’ proposal, as needed to determine a fair and reasonable price and the application of judgement to determine how well the proposed costs represent what the cost of the contract should be. The Requesting Department 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 part performance, and industry profit rates in the surrounding geographical area for similar work. (2 C.F.R. §200.324(b)). Cost of prices based on estimated cost for contracts under the Federal award are allowable only to the extent that cost incurred or cost estimates included in the negotiated prices would be allowable for the City under Subpart E—Cost Principles of this part. The City/non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (2 C.F.R. §200.324(c))

- c) Cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. (2 C.F.R. §200.324(d)).

- b. Procurement by competitive proposals: The technique of competitive proposals is normally conducted with more than one source submitting a response/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. (2 C.F.R. §200.320).

- i. Requirements for Competitive Proposals: If Procurement by competitive proposals is used, the following requirements apply:
 - 1) The Request for Proposals (RFP) must be publicized.
 - 2) identify all evaluation factors and their relative importance, i.e. evaluation/selection factors and points/percentage allocation for each factor;
 - 3) solicit proposals from an adequate number of qualified sources (via the electronic bidding platform and if applicable to a list of qualified sources to be provided to the Purchasing Office from the Requesting Department);
 - 4) the method for conducting technical evaluations of the proposal received and for selecting recipients as outlined in City of Marathon Code 2-178 should be followed and when appropriate should be outlined in the RFP;
 - 5) The City shall award the contract to the responsible firm whose proposal is most advantageous to the program/project, with price and other factors considered.

[Federal Note regarding architectural/engineering (A/E) professional services: the City may use competitive proposal procedures, i.e. Request for Qualifications (RFQs) and the Consultants Competitive Negotiation Act (CCNA), for qualifications-based procurement of 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 selector factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort. 2 C.F.R. §200.320 .

Informal Procurement- Over \$10,000.00 through \$35,000.00 Small purchases 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 lesser of either* (1) the Simplified Acquisition threshold (i.e. over \$35,000.00), or (2) whatever amount State (if applicable F.S. Statute requirement) or City of Marathon’s competitive procurement rules (i.e. \$35,000.00 or less). Price and rate quotations must be obtained from an adequate number of qualified sources. The Requesting Department should to the maximum extent possible obtain the number of price quotes as required in City of Marathon Code 2-178 and give consideration to the amount of the purchase when obtaining rate and price quotes. When purchasing complex supplies or services, please document and include justification for the number of price quotes obtained. The Requesting Department should follow the procedure as set forth in and ensure that proper documentation is maintained in this regard to justify the purchase. (2 C.F.R. §200.320).

2. Micro-purchases: Up to \$10,000.00 (i.e. purchases below \$10,000.00, See 2 CFR § 200.67) Micro- purchases are awarded based on price reasonableness. The Requesting Department will maintain documentation of price reasonableness. [Note: Action to verify the reasonableness, includes utilizing price quotes, telephone or internet research.] The Requesting Department, to the extent practicable, should distribute micro-purchases equitably among qualified suppliers. Documentation of the purchase in the form of a RTP, when applicable, is necessary to the extent to demonstrate that it is an allowable cost for performance of the Federal award (as per 2 C.F.R. §200.403) and to keep record of equal distribution to qualified suppliers. 2 C.F.R. §200.320(a)

3. Noncompetitive proposals: [2 C.F.R. §200.320][Note: this does not apply to Micro-purchases; RESTORE ACT/ Department of Treasury has sole source section that provides more detail and should be referred to when using RESTORE ACT funds]

a) Procurement by noncompetitive proposals: 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 from a single source; (substantial duplication of services to reach other sources is justification for proceeding with sole source, but this must be sufficiently documented by the Requesting Department and provided to the Finance Department).

2) the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation [Federal Note: Exigency” is generally defined as something that is necessary in a particular situation that requires or demands immediate aid or action. By comparison, the term “emergency” means an unexpected and usually dangerous situation that calls from immediate action. Emergency will typically involve a threat to the public or private property or some other form of dangerous situation, whereas an exigency is not necessarily limited].

3) the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or

4) after solicitation of a number of sources, a competition is determined inadequate [Before utilizing this exception, the Requesting Department should review the solicitation and the publicizing of the solicitation to ensure that it was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this is found to be the case, the Requesting Department should revise the solicitation and re-publicized the solicitation in order to resolve the competitive concerns. The Requesting Department should also document justification for the noncompetitive procurement and provide to the Finance Director].

D. Contracting with Small and Minority Business, Women’s Business Enterprises, and Labor Surplus Area Firms

As per 2 CFR 200.321, the City must take the affirmative steps below:

Business of this Policy to assure minority businesses, women’s business enterprises, and labor surplus area firms are used when possible:

The Requesting Department in conjunction with the City’s Finance Department shall:

1. Ensure that qualified small and minority businesses, and women’s business enterprises are placed on solicitation lists.
2. Ensure that qualified small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources, including the list of the electronic bidding platform suppliers that are notified of competitive solicitations, the Small Business Administration’s Dynamic Small Business Search website, and any additional supplier listed that may be generated.
3. Divide 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. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises.
5. Use 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.
6. Require the prime contractor, if subcontractors are to be let, to take the affirmative steps listed above.

[Federal Note: Collectively referred to as “socioeconomic contractors” or “socioeconomic contracting”, this requirement does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms; this requirement only imposes an obligation to carry out and document the six identified affirmative steps.]

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E. Contractual Considerations

Contract(s) must include the provisions of 2 C.F.R. 200 and Appendix II to 2 C.F.R. Part 200, as amended and as applicable depending upon the Federal program legislation (See Appendix II for details:

- Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148) and Copeland “Anti-Kickback Act (40 U.S.C. § 3145) *if the contract amount exceeds \$2,000.00* [Davis-Bacon Act applies only to Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program; This is not applicable to the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program Grants]
- Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-3708) *if the contract amount exceeds \$100,000*. It must include provision for compliance with 40 U.S.C. §§3702 and 3704, as supplemented by the Department of Labor regulations at 29 C.F.R. Part 5 (See Appendix II(E)) [Applies to FEMA contacts in excess \$100,000 under grant and cooperative agreement programs that involved the employment of mechanics and laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence]
- Equal Employment Opportunity Clause (41 C.F.R. Part 60-1.4(b)) [All contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the Equal Opportunity Clause; Applies to FEMA grant and cooperative agreement programs] (See 2 C.F.R. Part 200, Appendix II(C))
- Debarment and Suspension Clause (A contract award must not be made to parties listed in the governmentwide exclusions in the System for Award Management (SAM.gov) (See 2 C.F.R. Part 200, Appendix II(H); See also See Executive Order 12549, Executive Order 12689, 2 C.F.R. Part 180.530 and 2 C.F.R. Part 3000)[. This requirement applies to all FEMA grant and cooperative agreement programs]. A “covered transaction” includes contracts for goods or services in the amount of at least \$25,000; when the contract requires FEMA approval, regardless of the amount, the contract is for federally-required audit services, a subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either FEMA approval or is in excess of \$25,000.
- Byrd Anti-Lobbying Clause on all contracts; If the contract exceeds \$100,000.00, bidders must also submit an Anti-Lobbying Certification (see Attached Certification Regarding Lobbying Form). [This requirement applies to all FEMA grant and cooperative agreement programs.] (See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18)
- Procurement of Recovered Materials: *All procurements and contracts, involving the use of materials* must comply with the requirement to procure only items designated in the 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 items

exceed \$10,000 or the value of the quantity acquired by 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 program for procurement of recovered materials identified in the EPA guidelines. (See 2 C.F.R. Part 200, Appendix II(J); 2 C.F.R. §200.322, and Chapter 11 (Recycled Content Products) of this Policy and include the recovered/recycled materials clause.) [This requirement applies to all contracts awarded under FEMA grant and cooperative agreement programs]

- *If the contract amount exceeds \$250,000.00*, it must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties (See 2 C.F.R. 200, Appendix II(A) [Applies to all FEMA grant and cooperative agreement programs])
- *If the contract amount exceeds \$10,000.00*, it must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. (See 2 C.F.R. Part 200, Appendix II(B) [Applies to all FEMA grant and cooperative agreement programs])
- Rights to Inventions Made Under Contract or Agreement must be included if applicable. (See 2 C.F.R. Part 200, Appendix II(F) [This applies to “funding agreements” under 37 C.F.R. §401.2(a) but DOES NOT apply to FEMA’s PA Program, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households- Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding Agreement”])
- *If the contract or subgrant amount exceeds \$150,000.00*, it must include a provision that requires the contractor to agree to comply with 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 (33 U.S.C. §§ 1251-1387). Violations must be report to FEMA and the Regional Office of the Environmental Protection Agency (EPA) (See 2 C.F.R. part 200, Appendix II(G)).
- Prohibitions on certain telecommunications and video surveillance services or equipment as set forth in 2 C.F.R. § 200.216
- Domestic preference for procurements as set forth in 2 C.F.R. § 200.322
- Other Federal Contract Requirements:
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

F. Construction Contract Considerations

City Departments that handle construction projects are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. The City may use a time and material type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price, i.e. lump sum/not to exceed amount that the contractor exceeds at its own risk.

Time and Material contracts means a contract whose cost to the City 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. (Please refer to time and material provisions as set forth in more detail in 2 C.F.R. §200.318(j) (2 C.F.R. § 200.318(g)).

If the contract is for construction, it must include the Equal Opportunity Clause.

For construction contracts exceeding \$2,000 awarded under a Federal grant--unless otherwise exempted--it must include a Davis-Bacon Act Clause and Copeland Anti-Kickback Act clause addressing prevailing wage rates. [Note that FEMA Public Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses.]

If the contract amount exceeds \$100,000.00 and involves the employment of mechanics or laborers, it must include a Contract Work Hours and Safety Standards Clause.

Bonding requirements for construction or facility improvement contracts exceeding \$200,000.00:

The Requesting Department shall require the procurement to include

1. A bid guarantee from such bidder equivalent to five percent (5%) of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond from a surety insurer authorized to do business in Florida as a surety or any method permitted in F.S. 255.051, as amended, including but not limited to, 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 in accordance with City of Marathon Code Sec. 2-178.
2. 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. The performance bond shall be in accordance with F.S. 255.05
3. A payment bond on the part of the contract for 100 percent of the contractor 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. The payment and performance bonds shall be in accordance with F.S. 255.05, as applicable and unless waived under the provisions of F.S. 255.05(1)(d)

G. Capital Expenditure

Federal Funds may not be expended for capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life without prior written approval of the Federal Awarding Agency or pass-through entity. (2 C.F.R. §200.439(3)).

1. Insurance Coverage: The City must provide equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the City. (2 CFR 200.310)
2. Real Property:
 - a. Title: Subjection to obligations and conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will vest upon acquisition to City.
 - b. Use: Except as otherwise provided by Federal Statutes or by the Federal awarding

agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the City must not dispose of or encumber its title or other interests.

- c. Disposition: When real property is no longer needed for the originally authorized purpose, the City must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instruction must provide for one of the following alternatives: 1) Retain title after compensating the Federal awarding agency 2) Sell the property and compensate the Federal awarding agency 3) Transfer title to the Federal awarding agency or third party designated/approved by the Federal awarding agency.

3. Equipment:

- a. Title: Subject to obligations and conditions set forth in 2 CFR 200.313, title to equipment acquired under a Federal award will vest upon acquisition to City. Unless a statute specifically authorizes the Federal agency to vest title in the City without further obligations to the Federal Government, the Federal agency elects to do so, the title must be a conditional title. Title must vest in the City subject to the following conditions:

1. Use of equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
2. Not encumber the property without approval of the Federal awarding agency or pass-through entity.
3. Use and dispose of the property in accordance with 2 CFR 200.313 (b), (c) and (e)

- b. Use: Equipment must be used by the City in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal Award, and the City must not encumber the property without prior approval of the Federal awarding agency. When equipment is no longer needed for the original program or project, the equipment may be used in other activities in the order of priority as set forth in 2 CFR 200.313(c)(i) & (ii)

- c. Management Requirements: Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum meet with following requirements: 1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. 2) a physical inventory of the property must be taken and the results reconciled with the property records at least once every two years. 3) The Requesting Department should ensure that equipment is part of the control system to ensure adequate safeguards to prevent loss, damage, or theft of the property as set forth in Chapter 12 of the Policy. Any loss, damage or theft must be investigated. 4) The Requesting Department should ensure that adequate maintenance procedure is performed to keep the property in good condition. 5) The City shall follow the process as outlined below to ensure the highest possible return.

- i. The Requesting Department shall provide information as needed for their records and to maintain information to comply with the above requirements.

- d. Disposition: When the original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by the Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the City must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instruction:
- 1) Items of equipment with a current per unit fair market value of \$5,000.00 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency.
 - 2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, item of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the City or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of the participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
 - 3) The City may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the City must be entitled to compensation for its attributable percentage of the current fair market value of the property.
 - 4) In cases where City fails to take appropriate actions, the Federal awarding agency may direct the City to take disposition actions.

ATTACHMENTS

- 1. Procurement Form – For All Purchasing \$10,000.00 Or More**
- 2. Procurement Form – For All Federal Competitive Solicitations of More Than \$35,000.00**
- 3. Debarred, Suspended or Ineligible Entity Checklist**
- 4. Disaster Request for Purchase**
- 5. Resource Request Message (ICS 213 RR)**
- 6. Minority Owned-Business Declaration**
- 7. Certification Regarding Lobbying**
- 8. Public Entity Crime Statement**
- 9. Drug-free Workplace Certification**
- 10. E-Verify Statement**
- 11. Conflict of Interest**
- 12. Non-Collusion Affidavit**

City of Marathon Purchasing Policy and Procedures

ATTACHMENT 1

City of Marathon Procurement Form
(For all Purchasing \$10,000.00 or more)

Requirement (good/services to be procured):

If brand name or equal salient characteristics are: _____

Market Research:

Research Method:

Internet (_____)

Prior procurement files (_____)

Personal Knowledge of Local Trade Area (_____)

Other (_____)

Potential Sources:

Estimated Purchase Price: \$ _____

Additional Considerations:	Considered	Notes:
Federal Surplus Property	<input type="checkbox"/>	
Aggregates or Break Up Purchase	<input type="checkbox"/>	
Lease vs. Purchase	<input type="checkbox"/>	

Planned/Expected Contract Type:

Fixed Price (including fixed price per unit)

Cost Reimbursement plus fixed/fee/profit

Other: _____

Notes: cost plus percentage-of-cost is prohibited; time and material has restrictions (See §200.318 (j)(1))

City of Marathon Purchasing Policy and Procedures

ATTACHMENT 1

City of Marathon Procurement Form
(For all Purchasing \$10,000.00 or more)

Procurement Method:

Small Purchase Procedure (\$10,000.00 Through \$100,000.00) Written Solicitation of Price Quotes (Please include)
 Oral Solicitation of Price Quotes (attach documentation noting oral price quotes)
Vendor contact information/Price quoted

Sole Source \$10,000.00 or more
Noncompetitive-proposals Justification (refer to Chapter 14/2 CFR 200.320(f):

Notification/Publication Plan:

N/A if Micro-Purchase; Must be formally publicized if "estimated Purchase Price" is in excess of \$150,000.00

City of Marathon Purchasing Policy and Procedures

ATTACHMENT 2

City of Marathon Procurement Form
(For all Federal Competitive Solicitations of more than \$35,000.00)

Solicitation Issue Date: _____

Requirement (goods/services to be procured): _____

Responses/Bids/Offerors Received:

Name	Date Received/Bid opening	Date Checked in SAM/DMS/etc. as per Entity Checklist (Attachment E.3)

Selected Firm/Person/Entity/Company: _____

Selection Rationale: The bid/Proposal was most advantageous to the City price and other factors considered because

Price Reasonableness Assessment:

Bonding Requirements are included: 5% of the bid price and Performance Bond of 100% of the contract price and Payment bond of 100% of contract price.

**Rationale should be Consistent with RFPs stated evaluation factors*

**Rational should be consistent with Written Evaluation Plan*

City of Marathon Purchasing Policy and Procedures

ATTACHMENT 3

Debarred, Suspended or Ineligible Entity Checklist

Entity Name: _____

Federal/State Funding Agency: _____ Federal/State

Funding Program: _____

Federal Excluded Parties List System (EPLS) : Yes

SAM.gov No

State Convicted/Suspended/Discriminatory/Complaints Vendor Lists: Yes

dms.myflorida.com No

US DHHS List of Excluded Individuals and Entities (LEIE): Yes

Exclusions/oig.hhs.gov No

Verified By:

Signature

Printed Name

Title, Department

City of Marathon Purchasing Policy and Procedures

Disaster Request for Purchase

ATTACHMENT 4

Date of Request:	Requester Name:		
Requester Phone:	Requester Email:		
Requesting Department:	Vendor Name/Vendor Number:		
Incident Name:			
Request:			
Reason for Request--how was this caused by the incident?			
Type of purchase: <input type="checkbox"/> Replenish Stock <input type="checkbox"/> New Items/Materials <input type="checkbox"/> Insurance Claim Claim # _____ <input type="checkbox"/> Repair Work <input type="checkbox"/> Replacement due to damage (Include copy of all claim-related documents)			
Where are the items/materials/goods/services being used?			
What is the location of the repair or replacement work?			
If repair or replacement, is this temporary or permanent? <input type="checkbox"/> Temporary <input type="checkbox"/> Permanent		Priority: <input type="checkbox"/> Low <input type="checkbox"/> Routine <input type="checkbox"/> Urgent	
Order Details:			
Qty	Item Description	Cost per Unit	Total Expense
Total Cost:			

Please attach the required quotes on purchases \$10,000 or greater. This request for purchase must be approved before submitting to City Council for contract approval. Use this coding for the Agenda Item and Transactions:

Fund/Cost Center Ledger Account Spend Category Worktag/Grant Worktag/Project

FDEM Approval Needed? Yes No



ATTACHMENT 6

Minority Owned Business Declaration

_____, a sub-contractor engaged by City of Marathon during the completion of work associated with the below indicated project

(Check one)

_____ is a minority business enterprise, as defined in Section 288.703, Florida Statutes

or

_____ is not a minority business enterprise, as defined in Section 288.703, Florida Statutes.

F.S. 288.703(3) "Minority business enterprise" means any small business concern as defined in subsection (6)(see below) which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51-percent-owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an underrepresentation of commercial enterprises under the group's control, and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession. Ownership by a minority person does not include ownership which is the result of a transfer from a nonminority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. For purposes of this subsection, the term "related immediate family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

F.S. 288.703(6) "Small business" means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

Contractor may refer to F.S. 288.703 for more information.

Contractor

Sub-Recipient:

City of Marathon

Signature

Signature

Print Name: _____

Printed Name: _____

Title: _____

Title/ OMB Department: _____

Verified via:

<https://osd.dms.myflorida.com/directories>

Address: _____

DEM Contract:

City/State/Zip _____

Date: _____

FEMA Project Number: _____

**CERTIFICATION REGARDING LOBBYING
(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

DISCLOSURE OF LOBBYING ACTIVITIES
 COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<p>2. Status of Federal Action:</p> <input type="checkbox"/> a. bid/offer/application b. initial award c. post-award	<p>3. Report Type:</p> <input type="checkbox"/> a. initial b. material change
		<p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity</p> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p>	
<p>Congressional District, if known _____</p>		<p>Congressional District, if known _____</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p>	
		<p>CFDA Number, if applicable _____</p>
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p>	
<p>10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)</p>	
<p>(attach Continuation Sheet(s) if necessary)</p>		
<p>11. Amount of Payment (check all that apply)</p> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<p>13. Type of Payment (check all that apply)</p> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
<p>12. Form of Payment (check all that apply):</p> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<p>14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</p>		
<p>(attach Continuation Sheet(s) if necessary)</p>		
<p>15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/></p>		
<p>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards undergrants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project

(0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-

90«ENDIF»

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PART 2

PUBLIC ENTITY CRIMES STATEMENT

CITY OF MARATHON, FLORIDA SWORN STATEMENT UNDER F.S. SECTION 287.133(3) (A), ON PUBLIC ENTITY CRIMES.

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal or Contract for_____.
2. This sworn statement is submitted by (entity) _____ whose business address is _____ and (if applicable) Federal Employer Identification Number (FEIN) is_____(If a Sole Proprietor and you have no FEIN, include the last four (4) digits of your Social Security Number:_____.)
3. My name is_____and my relationship to the entity named above is _____.
4. I understand that a "public entity crime" as defined in Paragraph 287.133(a) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or any agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in paragraph 287.133(a) (b), Florida Statutes, means finding of guilt or a conviction of a public entity crime with or without an adjudication of guilt, in any federal or state trial court of records relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1) (a), Florida Statutes, means:
 1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling income among persons when not for fair interest in another person, or a pooling of equipment or income among persons when not for fair market value under a length agreement, shall be a prima facie case that one person controls another person. A person who kn

person. A person who was knowingly convicted of a **public** entity crime, in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of the state or of the United States with the legal power to enter into a binding contract for provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies)

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. (Please attach a copy of the final order.)

The person or affiliate was placed on the convicted FIRM list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in public interest to remove the person or affiliate from the convicted FIRM list. (Please attach a copy of the final order.)

The person or affiliate has not been placed on the convicted FIRM list. (Please describe any action taken by, or pending with, the Department of General Services.)

Signature

Date:

STATE OF FLORIDA
COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature at the space provided above on this _____ day of 2021, and is personally known to me, or has provided _____ as identification.

Notary Public
My Commission expires:

DRUG FREE WORKPLACE CERTIFICATION

The below-signed INDIVIDUAL/FIRM certifies that it has implemented a drug-free workplace program. In order to have a drug-free workplace prepare, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or services a copy of the statement specified in paragraph 1.
4. In the statement in paragraph 1., notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of nolo contendere to, any violation occurring in the workplace no later than five (5) working days after such conviction.
5. Impose a sanction on, or require fine satisfactory participation in drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement, I Certify that this firm complies fully with the above drug-free workplace requirements.

COMPANY: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE NUMBER(S): _____

SIGNATURE: _____

NAME (TYPED OR PRINTED): _____ TITLE: _____

E-VERIFY STATEMENT

Bid/Proposal Number: _____

Project Description: _____

I/FIRM acknowledges and agrees to the following:

I/FIRM shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. All persons employed by the FIRM during the term of the Contract to perform employment duties within Florida; and
2. All persons assigned by the FIRM to perform work pursuant to the contract with the Department.

Individual/Company/Firm: _____

Authorized Signature: _____

Title: _____

Date: _____

CONFLICT OF INTEREST

This sworn statement is submitted with Bid, Proposal or Contract for_____.

This sworn statement is submitted by (entity) _____ whose business address is

_____and (if applicable) Federal Employer Identification Number (FEIN) is_____(If a Sole Proprietor and you have no FEIN, include the last four (4) digits of your Social Security Number:_____.)

My name is_____and my relationship to the entity named above is_____.

1. The above named entity is submitting a Proposal for the City of Marathon RFP# _____ described as (Debris Response Services).
2. The Affiant has made diligent inquiry and provides the information contained in the Affidavit based upon his/her own knowledge.
3. The Affiant states that only one submittal for the above proposal is being submitted and that the above named entity has no financial interest in other entities submitting proposals for the same project.
4. Neither the Affiant nor the above named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraints of free competitive pricing in connection with the entity’s submittal for the above proposal. This statement restricts the discussion of pricing data until the completion of negotiations if necessary and execution of the Contract for this project.
5. Neither the entity nor its affiliates, nor anyone associated with them, is presently suspended or otherwise ineligible from participation in contract letting by any local, State, or Federal Agency.
6. Neither the entity nor its affiliates, nor anyone associated with them have any potential conflict of interest due to any other clients, contracts, or property interests for this project.
7. I certify that no member of the entity’s ownership or management is presently applying for an employee position or actively seeking an elected position with the City of Marathon.
8. I certify that no member of the entity’s ownership or management, or staff has a vested interest in any aspect of the City of Marathon.
9. In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above named entity, will immediately notify the City of Marathon.

Signature

Date

STATE OF FLORIDA

COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature at the space provided above on this ___ day of _____, 20___, and is personally known to me, or has provided _____ as identification.

Notary Signature

My Commission expires: _____

NON-COLLUSION AFFIDAVIT

This sworn statement is submitted with Bid, Proposal or Contract for_____.

This sworn statement is submitted by (entity) _____ whose business address is

_____ and (if applicable) Federal Employer Identification Number (FEIN) is_____ (If a Sole Proprietor and you have no FEIN, include the last four (4) digits of your Social Security Number:_____.)

My name is_____ and my relationship to the entity named above is_____.

1. The above named is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
2. Such Proposal is genuine and is not a collusive or sham proposal;
3. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix the price or prices in the attached proposal or any other Bidder, or to fix any overhead, profit or cost element of the proposal price or the proposal price of any other Bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage against the City of Marathon, Florida or any person interested in the proposed Contract; and
4. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

STATE OF FLORIDA
COUNTY OF

Signature Date

PERSONALLY APPEARED BEFORE ME, the undersigned authority, who, after first being sworn by me, affixed his/her signature at the space provided above on this __day of _____, 2023, and is personally known to me, or has provided _____ as identification.

Signature

My Commission expires: _____ Notary

Exhibit A
Sample 1--Notice of Intended Decision for Construction Bids

Date

To: All Bidders

Re: Notice of Intent to Award a Contract
_____ Project

To Whom it May Concern:

This letter will serve as notice of City's intent to award a contract to _____, the lowest responsible bidder for the _____ at the _____ 20__ City Council Meeting.

Construction bids for the _____ Project were received by the _____ on _____ 20_____.

Sincerely,

Exhibit A
Sample 2--Notice of Intended Decision for RFPs & RFQs

To: All Respondents

Re: Notice of Intent to Negotiate a Contract
Request for Competitive Solicitations for the _____

To Whom it May Concern:

This letter will serve as notice of City's intent to grant approval for staff to negotiate a contract with _____, the highest ranked respondent, for the _____ for the _____ at the _____, 2024 City Council Meeting.

Proposal responses for the Engineering Design and Permitting Services for the _____ were received by the _____ on _____, 2024.

Sincerely,

This content is from the eCFR and is authoritative but unofficial.

Title 2 – Grants and Agreements

Subtitle A – Office of Management and Budget Guidance for Grants and Agreements

Chapter II – Office of Management and Budget Guidance

Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Subpart D – Post Federal Award Requirements

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

Authority: 31 U.S.C. 503

Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

Procurement Standards

§ 200.317 Procurements by states.

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§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

§ 200.322 Domestic preferences for procurements.

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§ 200.324 Contract cost and price.

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§ 200.326 Bonding requirements.

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PROCUREMENT STANDARDS

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
 - (1) The non-Federal entity must 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 non-Federal entity 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 non-Federal entity.
 - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must 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, the non-Federal entity is encouraged to enter into state and local intergovernmental 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.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use 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) The non-Federal entity 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. See also § 200.214.

- (i) The non-Federal entity must 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) The non-Federal entity 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, 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.
- (k) The non-Federal entity 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 the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) 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 must be 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.
- (c) The non-Federal entity must 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.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must 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.
- (e) The non-Federal entity 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, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
- (1) **Micro-purchases** —

- (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
- (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
 - (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
- (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) **Small purchases** –

- (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which 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 bids method is the preferred method for procuring construction, if the conditions.

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

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders 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 the successful bidder can be made principally on the basis of price.

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

- (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (B) 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;
- (C) 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;
- (D) 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
- (E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method 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. They are awarded in accordance with the following requirements:

- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror 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 through A/E firms that are a potential source to perform the proposed effort.
- (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) 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) The non-Federal entity 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 (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, 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 must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

[85 FR 49543, Aug. 13, 2020, as amended at 88 FR 57790, Aug. 23, 2023]

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state 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.

§ 200.324 Contract cost and price.

- (a) The non-Federal entity 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, the non-Federal entity must make independent estimates before receiving bids or proposals.

- (b) The non-Federal entity 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 the non-Federal entity under subpart E of this part. The non-Federal entity 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.

§ 200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity 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 the non-Federal entity 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 non-Federal entity 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) The non-Federal entity'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 non-Federal entity 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 non-Federal entity 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 non-Federal entity 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 non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 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 non-Federal entity 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.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.