

City of New Orleans Federal Grant Procurement Policy



CITY OF NEW ORLEANS

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Federal Grant Procurement Policy

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Federal Grant Procurement Policy Updates

Version	Date	Summary of Changes
1.0	November 14, 2016	Completed Federal Grant Procurement Policy
2.0	December 12, 2016	Updated to clarify information regarding micro purchases.
3.0	February 20, 2017	Updated to change the name of the Procurement checklist to CNO Federal Funding Procurement Checklist for HUD Grantees. Updated the references to reflect the change.
4.0	November 8, 2018	Added section to address prohibition of the use of piggybacking when using HUD funds.
5.0	May 20, 2019	Revised Methods of Procurement section to include newly formatted procurement thresholds chart.
6.0	May 16, 2022	Added domestic preference requirement 200.322
		Added annual review requirement



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Section 1: Introduction and Purpose

When appropriate, the City of New Orleans (“the City”) requests Federal grant monies for projects that benefit its citizens. The City will follow all guidance and ensure proper financial stewardship of taxpayer resources. The document serves to outline the City of New Orleans’s procurement policy for all federally-funded projects and purchases. These policies and procedures reflect applicable state and local laws and their conformity to the applicable Federal laws and standards identified in 2 CFR 200.318-326.

Instances where state or local law is more restrictive than Federal law are noted in the Bureau of Purchasing Procurement Procedures, which are available to the public on the Bureau of Purchasing’s website (<http://www.nola.gov/purchasing/>) and are appended to this document as ATTACHMENT A. This document will be updated as needed to reflect changes in federal regulations or state and local laws.

All procurements in which federal funds are contemplated or used must be conducted in accordance with federal procurement requirements. This policy serves to explain the roles of various City personnel with respect to federally-funded procurements by providing a cross-reference between federal procurement regulations and explains the applicable City procurement policy and how it conforms with federal requirements.

All requesting departments shall consult this policy when dealing with any procurements in which federal funds are contemplated or used. To ensure compliance, the requesting department shall liberally construe as to whether a project may utilize federal funding, and thereby subject to the Federal Grant Procurement Policy.

If a procurement is subject to the Federal Grant Procurement Policy and HUD funds will be used, the requesting department shall complete the CNO Federal Funding Procurement Checklist for HUD Grantees located on the Bureau of Purchasing website to ensure compliance with all HUD requirements.

All federally-funded procurements shall be overseen by the Bureau of Purchasing in strict accordance with the Bureau of Purchasing Procurement Procedures located on the Bureau of Purchasing website.

Any interpretations, determinations or conflicts relating to the application or meaning of any of the provisions contained in this policy shall be made in the sole discretion of the Chief Procurement Officer or their designee. This shall include any interpretations as to whether a particular procurement is subject to the Federal Procurement Policy.

This document will be reviewed annually at a minimum to ensure continued compliance with all federal, State and local requirements.

Section 2: Code of Conduct

1. No employee, officer, or agent of the City shall participate in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, is or would be involved. Such a conflict could arise if the employee, officer, or agent; any member of his/her immediate family; his/her partner; or an organization which employs (or is about to employ) any of the above, has a financial or other interest or a tangible personal benefit from a firm considered for a contract. All Selection Committee members execute a disclosure certifying that they do not possess a conflict of interest involving any of the respondents and are required to submit a standard disclosure form to identify any potential conflicts of interest.

CFR Reference: 2CFR 200.318(c)(1).



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2. No employee, officer, or agent of the City shall solicit or accept gratuities, favors, or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial. All City officials, employees and agents are subject to the State of Louisiana Ethics Code, which prohibits the solicitation or acceptance of gratuities, favors, or anything of monetary value from any person entity for performance of their official duties, including issuance, review, and awarding of solicitations. This restriction not only applies to the City employee, officer, or agent, but also to that person's spouse or any entity in which that person or their spouse own at least 25%. All City employees must complete annual ethics training regarding all applicable laws.

CFR Reference: 2 CFR 200.318(c)(1)

3. The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every written contract and solicitation. It shall be a breach of ethical standards for any public employee or former employee, officer, or agent knowingly to use confidential information for his actual or anticipated personal gain or the actual or anticipated personal gain of any other person. Such a breach shall subject the public employee or former employee, officer, or agent to the jurisdiction of the Louisiana State Ethics Board.

CFR Reference: 2 CFR 200.318(c)(1)

4. The Louisiana State Ethics Code mandates that all Agency Heads must report alleged violations of the established standards of conduct to the Louisiana Ethics Review Board. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action by the Ethics Review Board, including but not limited to dismissal, suspension, or reduction in pay or position; censure and/or fine of not more than \$10,000.00 per violation; prohibition of appearing before the public agency; prohibition of negotiation or entering into contract with the public agency; rescission of contracts, permits, and licenses without public contractual liability; forfeiture of any gifts or payments made in violation of the State Ethics Code; imposition of late fees for failure to pay imposed fines; and objection to candidacy of person with outstanding fine, fee, or penalty resulting from violation of State Ethics Code equal to or greater than \$250. Ethics Review Board allegations and violations are personal violations and the City shall not provide any City employees, officers, or agents with legal assistance or defense related to such allegations or violations.

CFR Reference: 2 CFR 200.318(c)(1)

5. As outlined in the Bureau of Purchasing Procurement Procedures, the City utilizes a two-step check on all vendors during the procurement process. First, if federal funds are utilized, the City checks the potential vendor list against SAM.gov to verify that the potential awardee is not subject to federal debarment or suspension status. Second, if non-federal funding is used, the City consults its database of Vendor Evaluation forms to determine if there was a previous violation. Additionally, vendors are required as a part of their response to a solicitation to attest to the fact that they have not violated any standards in their submission to the City. If the City determines that there is a federal debarment, the City will not award a contract to the entity.



CFR Reference: 2 CFR 200.318(c)(1)

Section 3: Pre-Solicitation

Section 3 is the responsibility of the Grant Manager, requesting department head, and Bureau of Purchasing.

1. The City of New Orleans Bureau of Purchasing (“Purchasing”), led by the City’s Chief Procurement Officer (CPO) and Assistant Purchasing Administrator (APA), retain full control of all City procurement actions, including actions related to the City’s administration of federal funding. Purchasing coordinates with various City departments to gather information necessary to complete procurement activities, including language needed for solicitation documents (e.g. scope of work for a Request for Proposals), independent cost estimates for inclusion in bid packages, and maximum contract amounts. While some City department personnel may sometimes play an active role in a particular procurement, Purchasing owns all aspects of the procurement process and leads the development and implementation of key forms, templates, checklists, and workflows. It is the CPO’s responsibility to review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. The CPO determined when to analyze lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach based on the procurement request.

CFR Reference: 2 CFR 200.318(d)

2. The City will maintain records sufficient to detail the history of each procurement activity. These records will include, but are not limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. The CNO Federal Funding Procurement Checklist for HUD Grantees located on the Purchasing website will be utilized for every HUD funded procurement (with a copy kept in the procurement file) to ensure compliance with applicable federal, state, and local regulations and requirements. Purchasing, through the CPO and APA, owns all aspects of the procurement process and reviews the checklist to ensure compliance. While grant managers and other appropriate City personnel may complete certain forms and checklists, the CPO or APA must provide approval of every formal procurement. The requesting department may keep a procurement file as part of the program file, but complete procurement files will remain with Purchasing.

CFR Reference: 2 CFR 200.318(i)

If HUD funds are used, the CNO Federal Funding Procurement Checklist for HUD Grantees is the responsibility of the assigned grant manager and is to be verified by the requesting department head or designee and the CPO to ensure items are properly completed and checked off.

3. The City will perform cost or pricing estimates in connection with every procurement, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. As a starting point, the City will perform an independent



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cost estimate prior to receiving bids or proposal. The independent cost estimate may include evaluation of historical documentation of past projects of a similar scope and scale, average costs for similar work in the area, published unit costs from a national cost estimating database and federally established cost codes, equipment rates, and engineering and design services curves, as appropriate to the particular procurement.

CFR Reference: 2 CFR 200.3234).

4. A cost reasonableness analysis and documentation is required for every RFQ or RFP (competitive negotiations) or any time price competition is not the main evaluation factor. This analysis must be completed before awarding the contract. A Cost Analysis is the evaluation of separate elements (e.g. labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirement, and, ultimately, reasonable. Cost analyses are used when there is no price competition or when price competition is not the only evaluation factor, such as procuring architectural and engineering (A/E), professional, consulting, or program administrator services.

CFR Reference: 2 CFR200.324

5. The City will explore the feasibility to enter into State and local intergovernmental agreements or cooperative endeavor agreements, where appropriate, for procurement or use of common goods and services in order to foster greater economy and efficiency in accordance with efforts to promote cost-effective use of shared services. **However, for projects that include HUD funding, piggyback procurement or contracting is not permissible.** The City will also explore the use of Federal excess and surplus property in lieu of purchasing new equipment and property if feasible and if it reduces project costs. The City will also explore the feasibility of using value engineering (the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost) in the following two scenarios: (1) if a cost estimate is over budget or (2) if bids come in through the procurement over budget. The grant manager will complete the assessments above as a part of the HUD Procurement Checklist prior to bidding. Notwithstanding any other State or City laws, regulations or policies, the City may not enter into contracts that involve federal funding or assistance utilizing non-competitive procurement, except as expressly provided in the unique and non-competitive procedures outlined in the Bureau of Purchasing Procedures.

CFR Reference: 2 CFR 200.318(e)(f)(g)

6. The City will take all necessary affirmative steps to assure that minority businesses, women-owned business enterprises, and labor surplus area firms are used when possible. The City's affirmative steps shall be implemented as stated in the City's Federal Procurement Procedures. Additionally, the City maintains its own program, through explicit requirements, goals, and contractual language, the DBE Program requires that all contractors take proactive steps and make all reasonable efforts to benefit disadvantaged business enterprises, in accordance with formally adopted rules and procedures.

It is the policy of the City to practice nondiscrimination based on social and economic



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disadvantage, race, color, gender, disability and national origin in the award and performance of contracts. The City enacted the DBE Program for all City contracts in consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of City Code.

All contractors agree to use their best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including, without limitation, all reporting requirements and established DBE participation percentage. The Contractor's failure to carry out these requirements, as determined in good faith by the City's Office of Supplier Diversity ("OSD"), shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to, those set forth in the City's Policy Memorandum for the DBE Program.

CFR Reference: (2CFR 200.321(a)(b))

7. Domestic Preferences: 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.
 - a. For purposes of this section:
 - i. "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.
 - ii. "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.

CFR Reference 200.322

8. The City will 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 containing 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 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 procurement program for procurement of recovered materials identified in the EPA guidelines. For federally-funded solicitations, the requesting City department shall include in the specifications the use of fully or partially-recovered (recycled) materials to the greatest extent consistent with reasonable performance standards in accordance with federal regulations.



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CFR Reference: 2 CFR 200.323

9. Bonding requirements for procurements with Federal funds will include the minimum requirements listed below:

To be submitted with the bidding documents:

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

CFR Reference 2 CFR 200.325(a)

The bid bond or other security may be enclosed with the other bid documents submitted by a bidder and need not be submitted in a separate envelope attached to the envelope enclosing the other bid documents.

To be submitted at time of contract award:

A performance bond on the part of the contractor for 100 percent of the contract price. “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

CFR Reference: 2 CFR 200.325(b)

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.

CFR Reference: 2 CFR 200.325(c)

Section 4: Solicitation Procedures

Section 4 is the responsibility of the Grant Manager, Requesting Department Head, and Bureau of Purchasing.

If the HUD funding is used, items outlined in Section 4 are verified through the CNO Federal Funding Procurement Checklist for HUD Grantees located on the Bureau of Purchasing website. The City will complete the checklist as part of all HUD procurements.

Section 4.1: Full and Open Competition

1. All procurement carried out with federal funds, where the City is a direct party, shall be carried out in a manner that provides maximum full and open competition. Procurement procedures will not restrict or eliminate competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements.

CFR Reference: 2 CFR 200.319(a)



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2. The City shall not place unreasonable requirements on firms in order for them to qualify to do business, require unnecessary experience and excessive bonding, or encourage or participate in non-competitive practices among firms or affiliated companies. The City shall remain alert to organizational conflicts which would jeopardize the negotiation process and limit competition. The City shall not award non-competitive consultant retainer contracts except as expressly provided by funding source regulations. The City will not specify only a “brand name” product instead of allowing an “equivalent product” to be offered. A “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features, performance, or other relevant requirements of the named brand which must be met by offerors shall be clearly stated. No arbitrary actions will be undertaken in the procurement process.

CFR Reference: 2 CFR 200.319(a)(1-7); 2 CFR 200.319(c)(1)

3. The City will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed local geographical preferences as selection criteria in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Notwithstanding this prohibition, the City encourages the employment of City residents for City contracts as part of its Hire NOLA program, which establishes a goal of local employment by asking requesting the two lowest bidders as determined by evaluation of all selection criteria to demonstrate at least a good faith effort to meet this goal. This section does not preempt State or local licensing laws. When contracting for A/E services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms given the nature and size of the project to compete for the contract.

CFR Reference: 2CFR 200.319(b)

4. All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and, when necessary, the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

CFR Reference: 2 CFR 200.319(c)(1 - 2)

5. The City will engage in a full and open RFQ process to provide the City with a prequalified list of persons, firms, or products that may be utilized for acquiring goods and services. The prequalified list shall be routinely updated and include enough qualified sources to ensure maximum open and free competition for procurement of goods and services among the City’s prequalified list of persons, firms, or products.

CFR Reference: 2 CFR 200.319(d)



Section 4.2: Procurement Thresholds

Direct procurement by the City shall be made by using micro purchases, small purchases, formal sealed bids, competitive proposals, unique and non-competitive proposals, and emergency procurements. The City details each method of procurement (reflective of the item being procured) in the Bureau of Purchasing Procedures

Item being procured	Threshold	Written Specification	Bid Invitation and Advertising	Competitive Bids
Goods and Non-Professional Services	Under \$1,000	Not Required	Not Required	Informal ≥ 1 phone/fax/email
	\$1,000 - \$10,000	Not Required	Not Required	Informal ≥ 2 phone/fax/email
	\$10,000 - \$19,999	Not Required	Not Required	Informal ≥ 3 phone/fax/email
	\$20,000 and above	Required	Required	Formal
Professional Services	Under \$1,000	Not Required	Not Required	Informal ≥ 1 phone/fax/email
	\$1,000 - \$14,999	Not Required	Not Required	Informal ≥ 2 phone/fax/email
	\$15,000 and above	Required	Required	Formal
Public Works	Under \$50,000	Not Required	Not Required	Informal ≥ 3 phone/fax/email
	\$50,000 - \$150,000	Required	Required	Formal
	Over \$150,000	Required	Required	Formal

Section 5: Award

Section 5 is the responsibility of the Bureau of Purchasing, Requesting Department, and Law Department.

Section 5.1 Awarding Contracts

Contracts will only be awarded to responsible, responsive contractors/firms possessing the ability to perform successfully under the terms and conditions of the proposed procurement. “Responsibility” refers to the character or quality of the bidder, with consideration being given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. “Responsiveness” refers to the bidder’s compliance with all required specifications in the formal solicitation, inclusive of any addenda. Any bidders listed on the SAM.gov Excluded Party List will be deemed non-responsive and automatically excluded from consideration for award for any public assistance programs or activities.

1. Any or all solicitations may be deemed non-responsive or determined non responsible for a sound documented reason(s). Respondents disqualified due to non-responsiveness or lack of responsibility will be notified in writing as to why their bid was deemed non-responsive, or not responsible. Public works bidders have the right to request a hearing within five days of the



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written notification, where applicable. Full procedures for rejecting bids or proposals are outlined in the Bureau of Purchasing Procedures.

CFR Reference: 2 CFR 200.318(h); 2 CFR 200.320(c)(2)(v)

2. Prior to award, the City shall review the successful respondent's bids and Purchasing shall access the SAM.gov system and review bidders against the Excluded Party List. Bidders that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities are prohibited from being considered for award. Hard copy results of these comparisons shall be included in the procurement file.

CFR Reference: 2 CFR 200 Appendix II(I); 2 CFR 200.318(h); 2 CFR 2424

3. Contracts resulting from sealed bids shall be awarded to the lowest responsive and responsible bidder as determined by Purchasing and documented by publicly-available written bid tabulation forms. Sealed Bid procedures are outlined in the Bureau of Purchasing Procedures.

CFR Reference 2 CFR 200.318(h); 2 CFR 200.320(c)(2)(iv); 2 CFR 200 Appendix II(I);

4. Requests for Proposals shall be awarded to the proposal providing the best value to the City as determined using the selection criteria provided in the Request for Proposal and documented by publicly-available written evaluation forms. Procedures for procurement by competitive proposals are available in the Bureau of Purchasing Procedures.

See 2 CFR 200.320(d)

Section 5.2 Contract Costs/Prices

1. The City must conduct a cost analysis for all federal contracts to determine the reasonableness, allocation, and allowability of such costs. To satisfy this requirement, the requesting department shall prepare and submit a memorandum containing the cost analysis to Purchasing along with the bid tabulation.

2. Documentation of full and open competition resulting in at least two bidders shall be deemed reasonable.

CFR Reference: 2 CFR 200.319(a)

3. For professional services contracts, the City may negotiate price as a separate element following consideration and ranking of all technical proposals to select the proposal that provides the best value to the City. Should the City fail to reach agreement on a lower price with the contractor determined to provide the best value, it may select the contractor providing the second best value or terminate the procurement.

CFR Reference: 2 CFR 200.324

4. The City may only use estimated costs as basis for cost analysis for federally-funded contracts for A/E contracts.

CFR Reference: 2 CFR 200 Subpart E Cost Principles; 2 CFR 200.323(a)-(d); 2 CFR 200.320(d)(5); 2 CFR 200.400 et seq

5. For contracts without price competition or where cost analysis is required in accordance with 2 CFR 200.323(a), the City must negotiate profit as a separate price element. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of



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subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. The City utilizes a profit rate calculator to assess a reasonable level of profit for each contract. City-generated performance reports and contractor reports on prior contracts shall also be considered for past performance.

CFR Reference: 2 CFR 200.323(a)-(d); 2 CFR 200.320(d)(5);

Section 4.3 Prohibited Contracts

1. Cost plus percentage of cost and percentage of construction cost contracts may not be used under any circumstances.

CFR Reference: 2 CFR 200.323(a)-(d);

2. Time and material contracts may not be used unless the City determines that no other contract is suitable. Time and materials contracts prescribe cost to the City as the sum of: 1) actual cost of materials; and 2) direct labor hours charges at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Use of such contracts shall require an established price ceiling to ensure that the agreement does not allow for an open-ended contract price with no profit incentive for the contractor to control costs or labor efficiency. Such contracts shall be subject to frequent oversight to ensure that the contractor employs efficient methods and effective cost controls.

CFR Reference: 2 CFR 200.318(j)(i-ii(2))

3. Piggyback procurement or contracting is not permissible for projects that are HUD-funded.

Section 6: Contract Provisions

Section 6 is the responsibility of the Requesting Department and the City Law Department.

Contracts involving federal funding or assistance shall include appropriate funding source compliance provisions and clear performance measures. The Grant Manager and requesting department shall inform the Purchasing of the use or potential use of federal funds or assistance prior to solicitation. Purchasing shall coordinate with the Grant Manager and requesting department to ensure that the proper funding source compliance provisions are included as part of any related Invitation to Bid or Request for Qualifications or Proposals. The Law Department shall ensure that the appropriate Special Conditions, Declared Disaster and Performance Measures language, and appropriate compliance provisions are included as part of the agreement sent to the contractor for signature. The City of New Orleans Office of Community Development's Compliance Unit is responsible for updating the funding source compliance provisions.

Section 6.1 Special Conditions

All contracts utilizing federal funding shall expressly incorporate the relevant funding source compliance provisions into the contract.

Section 6.2 Federal Funding Compliance Provisions

All federal funding source compliance provisions shall include the following:

1. Contracts for more than the Simplified Acquisition Threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or



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

CFR Reference: 2 CFR Appendix II Part 200(A).

2. **Termination for Cause/Convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the City of New Orleans including the manner in which it will be effected and the basis for settlement.
CFR Reference: CFR Appendix II Part 200(B).
3. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b) in accordance with Executive Order 11246. “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp. p. 339) as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” Federal assisted construction contract “means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.”
CFR Reference: 2 CFR Appendix II Part 200(C).
4. **Davis-Bacon Act.** All prime construction contracts in excess of \$2,000 awarded by the City of New Orleans must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The City of New Orleans shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The City shall report all suspected or reported violations to the Federal awarding agency.
CFR Reference: 2 CFR Appendix II Part 200(D).
5. **Copeland “Anti-Kickback” Act.** All contracts must include provisions provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City of New Orleans shall report all suspected or reported violations to the Federal awarding agency.
CFR Reference: CFR Appendix II Part 200(D).



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6. **Contract Work Hours and Safety Standards Act.** All contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
CFR Reference: 2 CFR Appendix II Part 200(E).
7. **Rights to Inventions Made Under a Contract or Agreement.** All contracts under federal award that meets the definition of “funding agreement” under 37 CFR §401.2(a) and the recipient or subrecipient wish to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401 “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
CFR Reference: Appendix II Part 200(F).
8. **Clean Air Act/Clean Water Act.** All contracts and subgrants of amounts in excess of \$150,000, shall contain a provision which requires agreement to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), and the Federal Water Pollution Control Act as amended (33 USC 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
CFR Reference: CFR Appendix II Part 200(G).
9. **Energy Efficiency Standards.** All contracts shall include 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 USC 6201).
CFR Reference: 2 CFR Appendix II Part 200(H).
10. **Debarment and Suspension.** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p.235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.



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CFR Reference: 2 CFR Appendix II Part 200(I).

11. **Byrd Anti Lobbying Amendment.** Contractors applying or bidding for an award of \$100,000 or more must file the required Byrd Anti-Lobbying Amendment certification and ensure each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

CFR Reference: 2 CFR Appendix II Part 200 (J).

12. **Procurement of Recovered Materials.** Contracts must contain a clause stating contractors will 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.

CFR Reference: 2 CFR 200.322 and 2 CFR Appendix II Part 200(K).

Section 7: Contract Administration

Section 7 is the responsibility of the Requesting Department and the City Law Department.

1. The City shall ensure contractors and firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors or firms will be a factor in subsequent contract negotiations and award. Remedial action by the City through legal processes shall be considered in instances of identified significant non-performance.

CFR Reference: 2 CFR 200.318(b)

2. The City will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards will not relieve the City of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the City's unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

CFR Reference: 2 CFR 200.318(k)

Section 8: Awarding Agency Review

Section 8 is the responsibility of the Bureau of Purchasing and Requesting Department



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1. The City will make available, upon request of the awarding federal agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure the item and/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 City desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

CFR Reference: 2 CFR 200.324(a)

2. The City will make available upon request procurement documents, such as requests for proposals, invitations for bids, independent cost estimates, for the Federal awarding agency or pass-through entity's pre-procurement review when:
 - a. The City's procurement procedures or operation fails to comply with the procurement standards in this part;
 - b. The procurement is expected to exceed the Simplified Acquisition Threshold (\$150,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold (\$150,000), specifies a "brand name or equivalent" product;
 - d. The proposed contract is more than the Simplified Acquisition Threshold (\$150,000) and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold (\$150,000).

CFR Reference 2 CFR 200.324(b)

3. The City will be exempt from the pre-procurement review in the above paragraph (2) if the Federal awarding agency or pass-through entity determines City procurement systems comply with the standards of this part.

CFR Reference: 2 CFR 200.324(c)

- a. The City has self-certified its procurement system. Self-certification does not limit the Federal awarding agency's right to survey the system. The City provided written certifications to HUD stating that it complies with procurement standards found in Part 200. The City has cited specific policies, procedures, regulations, or standards as being in compliance with these requirements and has its system available for review.

CFR Reference: 2CFR 200.324(2)

Section 9: Protest Policy

Section 9 is the responsibility of Purchasing and the Requesting Department

The City shall utilize standard procedures to process and resolve procurement-related disputes. Purchasing is responsible for all aspects of protests. Detailed protest procedures are outlined in the Bureau of Purchasing Procedures provided on Purchasing's website (<http://www.nola.gov/purchasing/>). Protestors must exhaust all administrative remedies provided by the City outlined in the time frames given in the Bureau of Purchasing Procedures. The awarding agency shall be notified of all formal protests. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

CFR Reference: 2 CFR 200.318(k)



Section 10: Competitive Proposal Debriefing Policy

Section 10 is the responsibility of Purchasing and Requesting Department.

For all competitive proposals, respondents have the ability to request a debrief after an award is made. To request a debriefing, respondents must submit, in writing, a request within fifteen (15) days of the date on which City has provided notification of award. The City will work with all debriefing request to ensure that the debriefing is conducted within a reasonable time period. All respondents requesting a debrief shall be furnished with the basis for the selection decision and contract award. Full procedures for debriefing are outline in the Bureau of Purchasing Procedures.

Section 11: Amendments/Task Orders/Change Orders

Section 11 is the responsibility of Purchasing and Requesting Department.

At times, the City may modify the scope of a Public Works contract by issuance of a change order. Change Orders are only used for those Public Works formal sealed bids. Any informal bids may not be altered via a change order. Additionally, changes to a goods, materials, professional or non-professional services contracts are addressed through a contract amendment.

A Change Order is within or outside the scope of the contract depending on whether the Change Order alters the nature of the thing to be constructed and whether it is or not an integral part of the project objective.

Prior to modifying a contract in effect, the requesting department shall seek the approval from their department head. The requesting department head's approval is conditioned upon the submittal of a new ICE, new contract terms, and the rationale for the modification(s) to the contract. The requesting Department must include all possible factors in the new ICE.

For changes up to \$10,000.00, the head of the Requesting Department shall have the authority to approve in writing the in-scope Change Order to a total value up to \$10,000.00. For change \$10,000.01 and over, the head of the requesting department and the CAO shall both approve in writing the in-scope Change Orders through the Change Order Recommendation for Approval Form or the Plan Change Recommendation for Approval Form as applicable. All Change Orders shall be in writing or electronic format. It will detail the change(s) to the work, and/or its impact on the work schedule, and/or its effect on the contract price. Both the contractor and the City, or is design representative, shall sign a Change Order.

The requesting department must submit the change order and the Change Order Recommendation for Approval Form to Purchasing for review and approval. The requesting department must also record the Change Order in the office of the recorder of mortgages in Orleans Parish not later than 30 days after the approval date of the Change Order. In addition, the requesting department shall record the original contract with the Change Order(s) if it was not previously recorded.

A Public Works contract shall contain a provision authorizing the issuance of change order(s) within the scope of the contract as specified in Louisiana Public Bid Law. The City's Department of Public Works uses the term "Plan Change" in lieu of "Change Order. A "Field Change" authorizes the Contractor to (1) begin emergency work immediately that authorized City personnel can approve on the spot, and/or (2) do additional work that will be paid for by another public agency. A Field Change will become part of a Plan Change before the Contractor can invoice the City.