

City of Fort Lauderdale  
Federal Procurement Policy Appendix

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## FOREWORD

This document, in addition to any corresponding policy documents applicable to certain non-federally funded purchases or purchases, is intended to be a supplement to the existing City of Fort Lauderdale Procurement Manual and serves to address procurement requirements and procedures related to federally-funded expenditures. End users are encouraged to contact the Procurement Services Division with questions concerning the procurement process.

This document is not all-inclusive and the Procurement Services Division maintains a more detailed set of procedures designed for internal use. Procurement policies approved by the Chief Procurement Officer are on file in the Procurement Services Division.

This policy is current as of the date of publication. As circumstances dictate, this document will be revised and updated. This document serves as a supplement to the City's current procurement policies and is strictly applicable to federally funded purchases and expenditures.

## I. OVERVIEW

The standards provided in this Federal Procurement Policy Appendix (hereinafter referred to as the "Federal Policy Appendix") are basic principles that the City of Fort Lauderdale ("City"), as well as its subrecipients, shall adhere to when purchasing needed items using federal grant funds. The City shall use its own documented procurement policies and procedures that are consistent with applicable State, local, and tribal ordinances, laws and regulations, and that conform to applicable Federal law and standards. If a grantee's policy does not contain all federal requirements, and the grantee intends to use federal funds to pay for such services, the policy must be amended in accordance with 2 C.F.R. 200. Thus, the City of Fort Lauderdale has developed this Federal Policy Appendix to supplement its existing City of Fort Lauderdale Procurement Manual to ensure federally funded expenditures procedures conform with the federal procurement standards and requirements identified in 2 C.F.R. 200.318-327.

The City of Fort Lauderdale is responsible for the ethical, appropriate, and effective procurement, regardless of funding source, of goods and services on behalf of its residents and communities. As the recipient of federal funding, the City of Fort Lauderdale shall follow federal, state and/or local laws on procurement, as applicable. In some cases, the federal standard regulations are stricter than state or local requirements. In such cases, the City shall comply with the applicable federal law and the rules regulations in 2 C.F.R. 200. If state or local law requirements are stricter than federal standards, then State or local law will apply. To ensure compliance with 2 C.F.R. 200, the City of Fort Lauderdale shall follow the most restrictive rule applicable to it, whether it be its own procurement procedures,

applicable state procurement laws, or the procurement requirements set out in the federal rules.

The applicable regulations that shall be followed under this Policy include, but are not limited to, the following:

1. 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
2. 24 C.F.R. Part 570 – Community Development Block Grants

The City of Fort Lauderdale may, in its discretion, amend this Federal Policy Appendix to conform with federal, state or local governmental regulations, guidelines, policies, Executive Orders, Federal Register Notices, or for other reasons.

## II. APPLICABILITY

This policy applies to the procurement of all supplies, equipment, construction, and services of and for the City of Fort Lauderdale utilizing federal funding. All procurements for federally-funded expenditures will be done in accordance with 2 C.F.R. 200.

## III. PURPOSE

This Federal Policy Appendix is hereby established for the City of Fort Lauderdale by official action of the Chief Procurement Officer. For administrative program purposes, federal assistance covered by 2 C.F.R. 200 (such as CDBG-DR, FEMA, or FTA grants or funding) is considered “federal program grant funds.” As such, any procurements conducted using federal grant funds are governed by 2 C.F.R. 200. The City of Fort Lauderdale Procurement Manual, and this Federal Policy Appendix, reflect applicable state and local laws and regulations, which at times may be more stringent than federal. When state and local procurement requirements exceed the minimum provisions for federal procurements, or alternatively the federal laws exceed minimum state law provisions, the City of Fort Lauderdale and its subrecipients shall comply with the more stringent regulations or procedures.

The purpose of this Federal Policy Appendix is to ensure that the City’s procurement actions are in full compliance with applicable federal laws, regulations, and standards and federal awarding agency requirements.

## IV. CODE OF CONDUCT & CONFLICT OF INTEREST

City of Fort Lauderdale officials, employees, personnel, and affiliated parties involved in the procurement process shall adhere to the conflicts of interest requirements per the State of Florida Code of Ethics for Public Officers and Employees found in Chapter 112 (Part III) of the Florida Statutes, the Broward County Ethics Code Section 1-19 (Ord. No. 2010-22, § 1, 8-10-10; Ord. No. 2011-19, § 1, 10-11-11; Ord. No. 2015-55, § 1, 12-8-15; Ord. No. 2017-01, § 1,

1-10-17; Ord. No. 2018-14, § 1, 3-20-18; Ord. No. 2020-20, § 1, 5-5-20; Ord. No. 2020-28, § 1, 8-25-20; Ord. No. 2021-47, § 1, 10-5-21; Ord. No. 2022-50, § 1, 12-6-22, eff. 12-31-22; Ord. No. 2023-10, § 1, 3-14-23, eff. 3-21-23; Ord. No. 2023-20, § 1, 5-23-23, eff. 5-25-23; Ord. No. 2023-39, § 1, 11-14-23, eff. 11-16-23; Ord. No. 2024-41, § 1, 11-12-24), and the standards of conduct and conflict of interest requirements set forth in the City of Fort Lauderdale Procurement Ordinance Section 2-188 (Ord. No. C-17-26, § 4, 9-6-17).

Procurement Services Division employees shall conduct purchasing processes in an ethical manner that builds public confidence and preserves the integrity of an open and fair procurement process. These standards include but are not limited to City of Fort Lauderdale personnel policies and procedures and any code of conduct policy adopted by or applicable to the Procurement Services Division.

Further, for all federally funded purchases, the City of Fort Lauderdale shall also comply with the conflicts of interest policies in 2 C.F.R. 200.318(c)(1), which require that no employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by a federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors.

Any parent, affiliate, or subsidiary organization of the City of Fort Lauderdale that is not a state, local government, or Indian tribe must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest may include relationships with a parent company, affiliate, or subsidiary organization, which result in the entity being unable or appearing unable to be impartial in conducting a procurement action involving a related organization.

#### **A. Potential Conflicts of Interest**

Any employee, contract employee or appointed member who participates in the recommendation, requisitioning, bid solicitation, evaluation, or otherwise takes part in the procurement decision-making process and who has a whole or partial ownership in, or derives some income or personal benefit from the recommended or selected vendor should disclose the relationship as a potential conflict of interest. For the purposes of this section, acts of reciprocity or exchange of favors from which an employee derives some income or personal benefit shall be considered conflicts of interest.

In the event an outside consultant or contractor submits a bid or proposal on a project, of which the consultant or contractor was a previous contributor, other than an open

forum, then the bids or proposals from that consultant or contractor shall be disqualified on the basis of conflict of interest.

## V. CITY OF FORT LAUDERDALE FEDERAL PROCUREMENT PROCEDURES

The Procurement Services Division shall establish a set of federal procurement procedures implementing this Federal Policy Appendix. These procedures shall reflect applicable state and local law and conform to applicable federal standards as described in 2 C.F.R. 200.318-327 as amended. The procedures shall constitute the method of implementation of this Federal Policy Appendix.

## VI. AVOIDING DUPLICATIVE OR UNNECESSARY PURCHASES

The Procurement Services Division shall avoid the acquisition of unnecessary or duplicative items by consolidating or breaking out procurements to obtain a more economical purchase, making an analysis of leases versus purchase alternatives, and conducting other appropriate analyses to determine the most economical approach, including consideration of consolidating or breaking out procurements to obtain a more economical purchase.<sup>1</sup>

The Procurement Services Division shall be responsible for reviewing and monitoring all procurement methods to ensure the most economical and efficient use of federal funds.

## VII. PROCUREMENT PLANNING

When preparing to procure goods or services using federal funds, the Procurement Services Division shall consider the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.<sup>2</sup>

### A. Domestic Preferences

The City of Fort Lauderdale should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section shall be included in all subawards, contracts, and purchase orders under Federal awards.<sup>3</sup>

For purposes of this section:

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<sup>1</sup> 2 C.F.R. 200.318(d)

<sup>2</sup> 2 C.F.R. 200.318(f)

<sup>3</sup> 2 C.F.R. 200.322(a)

(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.<sup>4</sup>

(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.<sup>5</sup>

## B. Build America Buy America

For any infrastructure projects, the City of Fort Lauderdale shall comply with applicable Build America Buy America requirements pursuant to the Build America Buy America Act, enacted as part of the Infrastructure Investment and Jobs Act in November 2021, which established a domestic procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. The domestic preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States. The City of Fort Lauderdale shall comply with the implementing regulations at 2 C.F.R. Part 184 and any HUD-issued guidance, extensions, and/or waivers applicable to the Build America Buy America requirements.

## C. Procurement of Recovered Materials

The City of Fort Lauderdale shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the 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.<sup>6</sup>

The City of Fort Lauderdale should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and

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<sup>4</sup> 2 C.F.R. 200.322(b)(1)

<sup>5</sup> 2 C.F.R. 200.322(b)(2)

<sup>6</sup> 2 C.F.R. 200.323(a)

are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.<sup>7</sup> See Executive Order 14057, section 101, Policy.

#### D. Prohibition on Certain Telecommunications and Video Surveillance Equipment or Services

The City of Fort Lauderdale shall not obligate or expend loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.<sup>8</sup> As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

### VIII. INTERLOCAL AGREEMENTS

The Chief Procurement Officer is the authorized representative of the City of Fort Lauderdale to make purchases through those agency contracts or cooperative purchasing organizations, at the Chief Procurement Officer’s discretion and subject to approval of the City Manager for interlocal agreements if required by law. To foster greater economy and efficiency and in accordance with efforts to promote cost-effective use of shared services across the federal government, the Chief Procurement Officer may opt to enter into state and local interlocal agreements or intergovernmental agreements, where appropriate, for procurement or use of common or shared goods and services,<sup>9</sup> provided the following conditions are met:

1. The agreement provides for greater economy and efficiency and results in cost savings. Before utilizing an interagency agreement for procurement, the City shall compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;
2. The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for the City to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining

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<sup>7</sup> 2 C.F.R. 200.323(b)

<sup>8</sup> 2 C.F.R. 200.216

<sup>9</sup> 2 C.F.R. 200.318(e)

factor. Intergovernmental agreements may be used only for the procurement and use of common supplies and services. If services, required by the City, are provided by the State or a locality and are part of that government's normal duties and responsibilities, it is permissible for the City to share the services and cost of staff under an agreement;

3. The City shall take steps to ensure that any supplies or services obtained using another agency's contract were purchased in compliance with 2 C.F.R. 200;
4. The City's procurement files shall contain a copy of the Interlocal Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and
5. The agreement shall be between the City and a state or local governmental agency.

When using interlocal or cooperative purchasing, the Procurement Services Division shall effect as much competition as practical for the circumstances and shall ensure compliance with 2 C.F.R. 200. The City may not use an interlocal contract and add extra or unrelated goods or services that were not part of the original contract. The City shall review any standard agreements to make sure that all applicable procurement regulations are met and that the City's interests are protected.

## IX. VALUE ENGINEERING

The Procurement Services Division shall determine which procurement method provides the best value for the City. The City shall also use value engineering methods for construction projects of sufficient size to offer reasonable opportunities for cost reductions.<sup>10</sup>

The practice of value engineering includes a certain amount of expense which must be justified by potential cost savings. Accordingly, the City shall justify the need for value engineering and shall demonstrate that there is a distinct opportunity for financial benefit to warrant the added cost of a value engineering effort.

## X. RESPONSIBILITY

The Procurement Services Division shall award contracts only to responsible and eligible contractors possessing the ability to perform successfully under the terms and conditions of a proposed contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, proper classification of employees, record of past performance, and financial and technical resources.<sup>11</sup>

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<sup>10</sup> 2 C.F.R. 200.318(g)

<sup>11</sup> 2 C.F.R. 200.318(h)

The Procurement Services Division shall not award any contract until the prospective contractor, i.e., lowest responsive bidder or highest ranked offeror, has been determined to be responsible. A responsible bidder/offeror must:

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Have the necessary organization, experience, and operational controls, and technical skills, or the ability to obtain them;
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics; and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended or debarred.

The Procurement Services Division shall conduct research to determine that a prospective contractor is responsible.

## XI. RECORDKEEPING

The Procurement Services Division shall maintain records sufficient to detail the history of each procurement transaction.<sup>12</sup> These records shall 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 records should also include a justification for lack of competition when competitive bids or offers are not obtained.

## XII. ACCESS TO RECORDS

The City of Fort Lauderdale shall comply with requirements allowing access to records, which require that the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, have the right of access to any documents, papers, or other records of the

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<sup>12</sup> 2 C.F.R. 200.318(i)

City which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts.<sup>13</sup> The right also includes timely and reasonable access to the City's personnel for the purpose of interview and discussion related to such documents.<sup>14</sup>

The City of Fort Lauderdale shall make available, upon request of the Federal awarding agency or pass-through entity, the 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.<sup>15</sup>

When requested, the City must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:

- (1) The recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards;<sup>16</sup>
- (2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;<sup>17</sup>
- (3) The procurement is expected to exceed the simplified acquisition threshold and specifies a "brand name" product;<sup>18</sup>
- (4) The procurement is expected to exceed the simplified acquisition threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder;<sup>19</sup> or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.<sup>20</sup>

All contracts awarded by the City of Fort Lauderdale shall include a provision to the effect that the City, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, have the right of access to any documents, papers, or other records of contractors which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and

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<sup>13</sup> 2 C.F.R. 200.337

<sup>14</sup> 2 C.F.R. 200.337(a)

<sup>15</sup> 2 C.F.R. 200.325(a)

<sup>16</sup> 2 C.F.R. 200.325(b)(1)

<sup>17</sup> 2 C.F.R. 200.325(b)(2)

<sup>18</sup> 2 C.F.R. 200.325(b)(3)

<sup>19</sup> 2 C.F.R. 200.325(b)(4)

<sup>20</sup> 2 C.F.R. 200.325(b)(5)

transcripts. The City shall require contractors to maintain all required records for five (5) years from the date of execution of the closeout agreement for a grant.

### XIII. PROTESTS & DISPUTES

The City of Fort Lauderdale alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the City of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the City unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.<sup>21</sup>

The City's Chief Procurement Officer shall fully consider and promptly judge protests relating to the City's solicitation procedures, solicitation documents, or recommendations for award of a contract in accordance with the City of Fort Lauderdale's protests of solicitations ordinance under Sec. 2-182.1 (Ord. No. C-19-11, § 7, 6-4-19) and its dispute resolution and protests of awards and intents to award ordinance under Sec. 2-182 (Ord. No. C-17-26, § 4, 9-6-17; Ord. No. C-19-11, § 6, 6-4-19). Bidders or offerors shall be advised of these procedures in the solicitation documents. These procedures shall apply to all procurement and contract actions, including sole source awards and those resulting from formal competitive bidding and competitive proposals procedures.

Any vendor objecting to solicitation procedures, solicitation documents, or an award recommendation may file a "protest" in accordance with City of Fort Lauderdale's Bid Protest Procedures. In order for a vendor's protest to be considered valid, the protest must adhere to the requirements outlined in Chapter 2 - Article V of the City of Fort Lauderdale's ordinance.

If the protest does not comply with the requirements of the City's ordinance, the Chief Procurement Officer may reject the protest without further review. If the protest is timely and complies with the requirements, the City's Chief Procurement Officer, or City Manager, shall review the protest and all other relevant information. The City will provide a written decision to the protestor.

The procedure and time limits set forth in the City's ordinance are mandatory and are the sole and exclusive remedy in the event of a protest. Failure to comply with the procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the protest, including filing a legal proceeding.

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<sup>21</sup> 2 C.F.R. 200.318(k)

#### XIV. ELIGIBILITY & DEBARMENT STATUS

The City of Fort Lauderdale shall comply with 2 C.F.R. 200.214 regarding suspension and debarment. Prior to the award of a contract with a contractor, the City shall verify eligibility and debarment status. The City shall not enter into any contract with any organization which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689.

The City is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, which prohibits transactions with persons who commit, threaten to commit, or support terrorism. The City shall ensure all procurements are awarded in compliance with the State of Florida statutes and rules relating to procurement and determine that contractors are not listed on the federal government's terrorism watch list as described in Executive Order 13224.

#### XV. COMPETITION

The City of Fort Lauderdale shall ensure all procurement transactions under the Federal award are conducted in a manner that provides full and open competition and is consistent with the standards of 2 C.F.R. 319 and § 200.320.<sup>22</sup>

City ordinance and the City's Procurement Manual consider splitting orders of the same or like materials/requirements into two or more individual purchases with the intention of circumventing the formal competitive solicitation requirements as constituting an unauthorized purchase. As such, the City shall not break down requirements aggregating more than the Simplified Acquisition Threshold into multiple purchases that are less than the applicable threshold (commonly called "bid splitting" or "unbundling") merely to permit use of the small purchase procedures or avoid any requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the City's procurements.

All procurement transactions, regardless of dollar amount, shall be conducted so as to provide "maximum full and open competition" consistent with the standards of 2 C.F.R. 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft estimates, specifications, requirements, statements of work, or invitations for bid or requests for proposals shall be excluded from competing for such procurements.<sup>23</sup>

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<sup>22</sup> 2 C.F.R. 200.319(a)

<sup>23</sup> 2 C.F.R. 200.319(b)

To the greatest extent feasible the City shall avoid situations considered to be restrictive of competition, which include, but are not limited to, the following:

- Placing unreasonable requirements on firms in order for them to qualify to do business;<sup>24</sup>
- Requiring unnecessary experience and excessive bonding;<sup>25</sup>
- Noncompetitive pricing practices between firms or between affiliated companies;<sup>26</sup>
- Noncompetitive awards to consultants that are on retainer contracts;<sup>27</sup>
- Organizational conflicts of interest;<sup>28</sup>
- 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;<sup>29</sup> and
- Any arbitrary action in the procurement process.<sup>30</sup>

The City shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will 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 shall 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 shall be clearly stated.<sup>31</sup>

Specifications must describe functional needs, and may not:

- Include unrelated, non-functional requirements, such as participation in other government programs, estimates of economic benefit conferred upon a local economy, or a requirement that independent contractors provide certain benefits to their employees; or

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<sup>24</sup> 2 C.F.R. 200.319(c)(1)

<sup>25</sup> 2 C.F.R. 200.319(c)(2)

<sup>26</sup> 2 C.F.R. 200.319(c)(3)

<sup>27</sup> 2 C.F.R. 200.319(c)(4)

<sup>28</sup> 2 C.F.R. 200.319(c)(5)

<sup>29</sup> 2 C.F.R. 200.319(c)(6)

<sup>30</sup> 2 C.F.R. 200.319(c)(7)

<sup>31</sup> 2 C.F.R. 200.319(d)(2)

- Include requirements that restrict competition. Therefore, brand names may not be used except to indicate a level of quality. Specifications "may not restrict material specifications to suit the products of only one vendor if other vendors have similar products of equal quality."

Additionally, the City shall identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.<sup>32</sup>

To the extent consistent with established practices and applicable legal requirements, the City of Fort Lauderdale may develop written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. The City of Fort Lauderdale may make inquiries of bidders about these subjects and assess the responses. Any scoring mechanism shall be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.<sup>33</sup>

## XVI. VENDOR LIST

The City of Fort Lauderdale supports the principles of equal opportunity. The City encourages the participation of all vendors in the procurement of supplies, materials, equipment, and services. The City may maintain a list of vendors and shall distribute notice of contract opportunities to the list. The City shall ensure that all pre-qualified 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. The City shall not preclude potential bidders or offerors from qualifying during the solicitation period.<sup>34</sup>

### A. Contracting with Small Businesses, Minority Businesses, Women's Business Enterprises, Veteran-Owned Businesses, and Labor Surplus Area Firms

When possible, the City should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.<sup>35</sup>

Such consideration means:

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<sup>32</sup> 2 C.F.R. 200.319(d)(3)

<sup>33</sup> 2 C.F.R. 200.319(f)

<sup>34</sup> 2 C.F.R. 200.319(e)

<sup>35</sup> 2 C.F.R. 200.321(a)

- These business types are included on solicitation lists;<sup>36</sup>
- These business types are solicited whenever they are deemed eligible as potential sources;<sup>37</sup>
- Dividing procurement transactions into separate procurements to permit maximum participation by these business types;<sup>38</sup>
- Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;<sup>39</sup>
- Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;<sup>40</sup> and
- Requiring a contractor under a Federal award to apply this section to subcontracts.<sup>41</sup>

## XVII. METHODS OF PROCUREMENT

The City of Fort Lauderdale shall select the method of procurement depending on the anticipated expenditure amounts and the type of service or materials being procured in accordance with the requirements outlined in the City of Fort Lauderdale Procurement Manual. The City of Fort Lauderdale has established policy and procedures for informal procurements in its City of Fort Lauderdale Procurement Manual. The Procurement Services Division will follow its established policy and procedures for informal and formal procurements, and shall adhere to established City of Fort Lauderdale thresholds per the City of Fort Lauderdale Procurement Manual.

However, the City of Fort Lauderdale has identified the following additional steps that shall be taken to ensure proper conformance with 2 C.F.R. 200 requirements:

### A. Non-Competitive Procurements

Unlike locally funded procurements, under no circumstances are federally funded procurements “exempt” from certain requirements unless the following circumstances are met:

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<sup>36</sup> 2 C.F.R. 200.321(b)(1)

<sup>37</sup> 2 C.F.R. 200.321(b)(2)

<sup>38</sup> 2 C.F.R. 200.321(b)(3)

<sup>39</sup> 2 C.F.R. 200.321(b)(4)

<sup>40</sup> 2 C.F.R. 200.321(b)(5)

<sup>41</sup> 2 C.F.R. 200.321(b)(6)

- (1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;<sup>42</sup>
- (2) The procurement transaction can only be fulfilled by a single source;<sup>43</sup>
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;<sup>44</sup>
- (4) The City requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval;<sup>45</sup> or
- (5) After soliciting several sources, competition is determined inadequate.<sup>46</sup>

NOTE: Unlike local procurements where the City Manager may authorize non-competitive procurements in a non-emergency situation, if the above circumstances are not present and documented, the City may not proceed with non-competitive procurement procedures.

## B. Pre-Qualification of Bidders

The City shall not preclude potential bidders from qualifying during the solicitation period. For any solicitations in which only “pre-qualified” vendors may submit bids, the City must also allow bidders to become qualified during the bidding period. If an ITB is issued and will only accept bids from “pre-qualified bidders”, the City must allow bidders to submit their qualifications, have their qualifications assessed by the City, and get pre-qualified and thus allowed to submit a bid, all during the ITB solicitation period.

## C. Conflicts / Disqualifications

Note: For federal compliance, the city “must not preclude potential bidders from qualifying during the solicitation period.” (2 CFR 200.319(e)). In other words, any solicitations where only “pre-qualified” vendors may submit bids, the city must also allow bidders to become qualified during the bidding period. If an ITB is issued and will only accept bids from “pre-qualified bidders”, the city must allow bidders to submit their qualifications, have the city assess their qualifications, and get pre-qualified and thus allowed to submit a bid, all during the ITB solicitation period.

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<sup>42</sup> 2 C.F.R. 200.320(c)(1)

<sup>43</sup> 2 C.F.R. 200.320(c)(2)

<sup>44</sup> 2 C.F.R. 200.320(c)(3)

<sup>45</sup> 2 C.F.R. 200.320(c)(4)

<sup>46</sup> 2 C.F.R. 200.320(c)(5)

## D. Piggybacking

While strategic sourcing, intergovernmental agreements, and cooperative purchasing are encouraged by 2 CFR 200.318(e), use of piggybacking can be higher risk, as the original contract must still be federally compliant (i.e. must have an Independent Cost Estimate, price/cost analysis, outreach to MWBE firms, etc.) Piggybacking shall only be allowable under federally funded contracts if the City has access to the original procurement documents to review and ensure proper procurement practices compliant with the federal regulations have been documented.

## E. Design/Build Services

Design-build is not explicitly allowable under 2 CFR 200, and it can be difficult to comply with the requirements when using the design-build method. For instance, the preferred procurement method for construction is sealed bidding (ITB), while architectural/engineering services generally require procurement by RFQ.

## XVIII. CONTRACT COST AND PRICE

The Procurement Services Division shall ensure procedures result in the purchase of goods and services at a fair and reasonable price and are consistent with the Cost Principles outlined in 2 C.F.R. 200 Subpart E.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.<sup>47</sup> Costs must meet three critical tests. The costs must be:

1. *Allowable*. The applicable cost principles will usually state whether a type of cost is allowable or not.<sup>48</sup>
2. *Allocable*. Costs are logically related to or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.<sup>49</sup>
3. *Reasonable*. What a prudent business would pay in a competitive marketplace. A cost can be allowable, allocable and still not be what a prudent businessperson would pay.<sup>50</sup>

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated

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<sup>47</sup> 2 C.F.R. 200.404

<sup>48</sup> 2 C.F.R. 200.403

<sup>49</sup> 2 C.F.R. 200.405

<sup>50</sup> 2 C.F.R. 200.404

prices would be allowable for the City under 2 C.F.R. 200 Subpart E – Cost Principles. The City may reference its own cost principles as long as they comply with Subpart E.<sup>51</sup>

### A. Independent Cost Estimate

An Independent Cost Estimate (ICE) is the estimated cost of a proposed expenditure. An ICE assists in evaluating the cost reasonableness of a contractor's proposed costs or prices on an objective basis and is a required procedure when conducting procurements that exceed the Simplified Acquisition Threshold.

Before issuing a solicitation or receiving bids or proposals, the Procurement Services Division shall work with end users to develop an ICE for the products or services to be purchased.<sup>52</sup> If the Procurement Services Division intends to require a breakdown of estimated costs, the in-house ICE should be broken down into the various cost elements.

### B. Price and Cost Analysis

The Procurement Services Division shall work with end users to perform a price or cost 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 transaction.<sup>53</sup>

A price analysis is essentially a comparison of lump sum pricing, or the process of examining and evaluating the total proposed price without evaluating its separate cost elements and proposed profit.<sup>54</sup> Price analysis shall be used to verify that the overall price offered is fair and reasonable. Price analysis must be completed in all cases listed below to determine the reasonableness of the proposed contract price:

1. Sealed bid with 2 or more responsible bidders and for which the low bidder was selected; or
2. Competitive proposals (RFPs) with 2 or more offerors where price was part of the proposal.

A cost analysis is the review and evaluation of any separate cost elements (labor, material, administrative) and profit or fee in an offeror's bid or proposal, as needed to determine a fair and reasonable price and to determine the degree to which the offeror's proposed costs represent the cost of performance of the contract, assuming reasonable

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<sup>51</sup> 2 C.F.R. 200.324(b)

<sup>52</sup> 2 C.F.R. 200.324(a)

<sup>53</sup> 2 C.F.R. 200.324(a)

<sup>54</sup> Buying Right CDBG-DR and Procurement: A Guide to Recovery

economy and efficiency and to ensure the costs are allowable, allocable, and related to the requirements.

A cost analysis shall be used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required, such as when an offeror is required to submit individual cost elements e.g., under architectural or engineering services contracts.<sup>55</sup> The City must perform a cost analysis for any procurement action in excess of the Simplified Acquisition Threshold in which there is no price competition. A cost analysis will always be necessary under the following circumstances, unless cost reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation:

1. When adequate price competition is lacking, such as under a Request for Qualifications;
2. For non-compete or sole source procurements; or
3. For contract modifications or change orders which exceed the Simplified Acquisition Threshold.

## **XIX. PREVAILING WAGES AND DAVIS-BACON AND RELATED ACTS**

When applicable, for any contract in excess of \$2,000, the City shall comply with the Davis-Bacon Act at 40 U.S. Code 3141–3148. When required by Federal program legislation, construction contracts in excess of \$2,000 awarded by the City shall require compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 C.F.R. part 3).

In accordance with the statute, for each contract subject to prevailing wages, 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. When prevailing wages have been determined to be applicable, the Procurement Services Division 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.

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<sup>55</sup> Buying Right CDBG-DR and Procurement: A Guide to Recovery,

The City shall ensure its contractors follow wage requirements found in 40 U.S. Code Chapter 31 subchapter IV where prevailing wages are discussed.<sup>56</sup>

## XX. BID SECURITY

The City of Fort Lauderdale shall adhere to its established policy for bid bonds, performance bonds, and payment bonds and for federal expenditures, shall ensure that its bonding policy and requirements are consistent with 2 C.F.R. 200.326. Bids that do not comply with the minimum surety requirements shall be rejected as non-responsive. For federally funded contracts, the City shall ensure that bid security is a minimum of 5% of the amount of the bid.

## XXI. CONTRACT ADMINISTRATION

The Procurement Services Division shall be responsible for the oversight and management of a purchase commitment, which includes the initial procurement, renewal, termination of an existing contract, changes in existing contracts, contractor oversight, and management of disputes. The City shall maintain a system for contract administration to ensure contractor conformance with the terms, conditions, and specifications in the contract and to ensure adequate and timely follow up of all purchases.

### A. Disputes

The City of Fort Lauderdale alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the City of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

### B. Contract Types

Depending on the type of procurement used, the City will execute the appropriate contract type. Any standard contract shall be modified to include requirements for the applicable federal grant. The City shall incorporate required provisions and standards into each procured contract or agreement. Per City policy, only the Chief Procurement Officer has signature authority. Only individuals with signature authority may approve contracts or change orders, or sign contracts, addenda, change orders, and amendments.

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<sup>56</sup> 2 C.F.R. Appendix II to Part 200 (D)

**IMPORTANT NOTE: Federal code prohibits cost plus a percentage of cost (CPPC) or a percentage of construction cost.**<sup>57</sup> Therefore, City contracts shall not use cost plus percentage of cost or percentage of construction cost contract methods, and its contracts shall not contain any cost plus percentage of cost or percentage of construction cost provisions.

This prohibition against cost plus percentage of cost or percentage of construction cost shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

#### *1. Firm-Fixed Price*

Fixed-price (either “lump sum” or “unit price”) contracts are used when there will likely be effective competition based on a complete product description and clear plans and specifications. Firm-fixed price contracts are appropriate when there are not any significant technical or engineering unknowns, and is suitable for construction, acquiring commercial items, or acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when the City can establish fair and reasonable prices at the outset, such as when:

- There is adequate price competition;
- There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid certified cost or pricing data;
- Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- Performance uncertainties can be identified, and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

A fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

#### *2. Cost Reimbursement*

A cost-reimbursement contract is appropriate when it is not feasible to award a fixed price contract. A cost reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling

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<sup>57</sup> 2 C.F.R. 200.324(c)

that the contractor may not exceed (except at its own risk) without the approval of Commissioners Court. The City shall use cost-reimbursement contracts only when:

- Circumstances do not allow the City to define its requirements sufficiently to allow for a fixed-price type contract; or
- Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. Cost-reimbursement contracts will be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

### 3. *Time & Materials*

Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:

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

The City may use time-and-materials type contracts only after a determination that no other contract is suitable.<sup>58</sup> Therefore, the City shall ensure a ceiling price is set for each such contract that the contractor exceeds at its own risk. The City shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.<sup>59</sup>

### 4. *Change Orders / Contract Modifications*

Modifications to contracts may be made, via formal amendment to the contract, due to changes in conditions, scope, duration, cost, or any of the terms of the contract. For this amendment to be valid, it must be in writing, signed, and attested by both the City and the contracting party and attached to all original contract documents. The City shall require review by its attorney prior to implementing the process.

## C. Contractor Oversight

The City shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.<sup>60</sup>

## D. Record Retention

Although 2 C.F.R. 200.334 requires the retention of all records and documentation pertinent to the federally-funded expenditure for a minimum of three (3) years from the

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<sup>58</sup> 2 C.F.R. 200.318(j)(1)

<sup>59</sup> 2 C.F.R. 200.318(j)(2)

<sup>60</sup> 2 C.F.R. 200.318(b)

date of submission of their final financial report, the City shall abide by Florida Statute Title XXXIII Chapter 560 (s. 560.1105 and 560.211), which is currently the most restrictive of local, federal and state regulations, and requires the retention of records for a minimum of five (5) years. If a local, federal, or state statute or regulation specifies a longer retention period for any records series received, created, or maintained by an agency, the statute or regulation overrides this schedule.

## XXII. MANDATORY CONTRACT CLAUSES & PROVISIONS

Federally-funded work requires that specific contract documents and language must be made a standard part of every solicitation and/or contract involving federal dollars. Contracts awarded by the City of Fort Lauderdale using federal grant funds shall contain the applicable provisions and clauses required by Federal statutes and implementing regulations, including those described in Appendix II to Part 200.<sup>61</sup> Any document that is signed by the City and has legal implications and consequences shall be carefully reviewed by the City of Fort Lauderdale City Attorney's Office with respect to its completion.

When necessary, the Procurement Services Division shall assist the City Attorney's Office in the preparation of contracts. Contracts shall include the provisions required for federally-funded contracts, including performance requirements and period of performance or date of completion. All contracts shall adhere to cost principles outlined in 2 C.F.R. Subpart E – Cost Principles.

In addition to other provisions required by the applicable Federal agency or awarding entity, all contracts awarded by the City of Fort Lauderdale using federal funding shall contain provisions covering the following, as applicable.

### A. Remedies

Contracts awarded by the City for more than the Simplified Acquisition Threshold, which for the City of Fort Lauderdale is set at \$100,000, shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.<sup>62</sup>

### B. Termination for Cause & Convenience

All contracts awarded by the City in excess of \$10,000 shall address termination for cause and convenience, including the manner by which it will be effected and the basis for settlement.<sup>63</sup>

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<sup>61</sup> 2 C.F.R. 200.327

<sup>62</sup> 2 C.F.R. Appendix II to Part 200 (A)

<sup>63</sup> 2 C.F.R. Appendix II to Part 200 (B)

## C. Civil Rights Requirements

The City of Fort Lauderdale shall comply with the various civil rights requirements when carrying out activities under a federal award, including but not limited to those requirements pursuant to Title VI of the Civil Rights Act of 1964.<sup>64</sup> These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### *1. Nondiscrimination on the Basis of Race, Color, and National Origin*

The City of Fort Lauderdale shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

### *2. Nondiscrimination on the Basis of Sex*

The City of Fort Lauderdale shall comply with Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. 1681 et seq.), which prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

### *3. Nondiscrimination on the Basis of Disability*

The City of Fort Lauderdale shall comply with The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. 12101-12213), which prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Contractors must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### *4. Nondiscrimination on the Basis of Handicap*

The City of Fort Lauderdale shall comply with Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. 794), which provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.

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<sup>64</sup> Pub. L. 88-352, 78 Stat. 241,

#### 5. *Nondiscrimination on the Basis of Age*

The City of Fort Lauderdale shall comply with The Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. 6101 et seq.), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance), which prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance.

#### 6. *Nondiscrimination on the Basis of Limited English Proficiency*

The City of Fort Lauderdale shall comply with Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin, which requires that recipients and subrecipients of federal assistance take reasonable steps to provide meaningful access to persons with limited English proficiency.

Consistent with the preceding nondiscrimination requirements, City contractors must comply with the following requirements:

- A contractor of the City must not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability.
- A contractor of the City carrying a program or activity under a federal grant award must not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination.
- Contractors must adhere to any Federal implementing regulations and other requirements with respect to nondiscrimination.

### D. Equal Employment Opportunity

The City of Fort Lauderdale shall, in accordance with Title VII of the Civil Rights Act of 1968, comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor), which implement Executive Order No. 11246, *Equal Employment Opportunity*, as amended by Executive Order No. 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*.

The City of Fort Lauderdale shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their

race, color, creed, national origin, sex, gender identity, disability,<sup>65</sup> veteran status,<sup>66</sup> or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

A contractor must refrain from discrimination against present and prospective employees for reason of age in accordance with section 4 of the Age Discrimination in Employment Act of 1967 (codified as amended at 29 U.S.C. 623). Additionally, a contractor must, in accordance with Section 102 of the Americans with Disabilities Act of 1990 (codified as amended at 42 U.S.C. 12112) and the requirements of the U.S. Equal Employment Opportunity Commission at 29 C.F.R. Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act) pertaining to employment of persons with disabilities.

Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. Part 60–1.3 shall include the equal opportunity clause provided under 41 C.F.R. 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”<sup>67</sup>

The City of Fort Lauderdale shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

- (i) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor agrees to post in conspicuous places, available

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<sup>65</sup> 48 C.F.R. 52.222-36 and 41 C.F.R. 60-741.5(a)

<sup>66</sup> 41 C.F.R. 60.300

<sup>67</sup> 2 C.F.R. Appendix II to Part 200 (C)

to employees and applicants for employment, notices to be provided by City setting forth the provisions of this nondiscrimination clause.

- (ii) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- (iii) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
- (iv) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of Contractor's noncompliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, the contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) Contractor will include the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The City of Fort Lauderdale agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. However, as a local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of the City of Fort Lauderdale which does not participate in work on or under the contract.

The City of Fort Lauderdale agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The City of Fort Lauderdale further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City of Fort Lauderdale agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the City of Fort Lauderdale under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### E. Davis-Bacon and Related Acts

The City of Fort Lauderdale shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3148 and 40 U.S.C. 276a to a-7).<sup>68</sup> When required by Federal program legislation, construction contracts in excess of \$2,000 awarded by the City of Fort Lauderdale shall require compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 C.F.R. part 3). 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 Fort Lauderdale 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 of Fort Lauderdale shall report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c and 40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). 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 Fort Lauderdale shall report all suspected or reported violations to the Federal awarding agency.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$2,000.

### F. Contract Work Hours and Safety Standards Act

The City of Fort Lauderdale shall comply with the Contract Work Hours and Safety Standards Act, pursuant to 40 U.S. Code 3701–3708 and 40 U.S. Code 327-333.<sup>69</sup> Where applicable, all contracts awarded by the City of Fort Lauderdale in excess of \$100,000

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<sup>68</sup> 2 C.F.R. Appendix II to Part 200 (D)

<sup>69</sup> 2 C.F.R. Appendix II to Part 200 (E)

that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S. Code 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S. Code 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. Code 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.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$100,000.

### G. Rights to Inventions Made Under a Contract or Agreement

Patents, copyrights, and rights in data requirements arise within the context of federally assisted projects, the purpose of which is to finance the development of a product or information. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. 401.2 (a) and the City of Fort Lauderdale wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the City of Fort Lauderdale shall comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.<sup>70</sup>

### H. Clean Air Act and the Federal Water Pollution Control Act

The City of Fort Lauderdale shall comply with the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.<sup>71</sup> Where applicable, all contracts awarded by the City of Fort Lauderdale in excess of \$150,000 shall contain a provision for compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). The Federal Water Pollution Control Act (“Clean Water Act”) establishes the basic structure for regulating

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<sup>70</sup> 2 C.F.R. Appendix II to Part 200 (F)

<sup>71</sup> 2 C.F.R. Appendix II to Part 200 (G)

discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The Clean Air Act and the Federal Water Pollution Control Act requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$150,000.

## I. Debarment and Suspension

The City shall not award, contract with, or use debarred, suspended or ineligible contractors or subrecipients. A contract award shall not be made to parties listed on the governmentwide exclusions 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.”<sup>72</sup>

The City’s Procurement Services Division shall ensure, prior to award, that all contractors receiving federal funds have met all the eligibility requirements outlined in state and federal law. The City shall notify contractors that it is their sole responsibility to verify contractor and subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

The City of Fort Lauderdale shall comply with Executive Orders 12549 and 12689, which prohibit awards, subawards, and contracts with parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

## J. Byrd Anti-Lobbying Amendment

The City of Fort Lauderdale shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).<sup>73</sup> Contractors that apply or bid for an award of \$100,000 or more must file

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<sup>72</sup> 2 C.F.R. Appendix II to Part 200 (H)

<sup>73</sup> 2 C.F.R. Appendix II to Part 200 (I).

the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. Code 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.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### K. Procurement of Recovered Materials

The City of Fort Lauderdale shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, by procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>74</sup>

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed \$10,000.

#### L. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The City of Fort Lauderdale is prohibited from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).<sup>75</sup>

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<sup>74</sup> 2 C.F.R. Appendix II to Part 200 (J) and 2 C.F.R. 200.323

<sup>75</sup> 2 C.F.R. Appendix II to Part 200 (K) and 2 C.F.R. 200.216

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### M. Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, the City of Fort Lauderdale 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 shall be included in all subawards including all contracts and purchase orders for work or products under this award.<sup>76</sup>

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; and (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.<sup>77</sup>

### N. Whistleblower Protection Act

The City of Fort Lauderdale shall comply with the Whistleblower Protection Act pursuant to 41 U.S. Code 4712 and 10 U.S. Code 2409, which requires that an employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

The City shall require that contractors inform employees and subcontractors in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S. Code 4712, as described in section 3.908 of the Federal Acquisition Regulation.

These requirements shall extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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<sup>76</sup> 2 C.F.R. Appendix II to Part 200 (L) and 2 C.F.R. 200.322(a)

<sup>77</sup> 2 C.F.R. Appendix II to Part 200 (L) and 2 C.F.R. 200.322(b)

## O. Copyrights and Rights in Data

The City of Fort Lauderdale shall comply with the requirements pursuant to 2 C.F.R. 200.315 with regard to intangible property. The City of Fort Lauderdale is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”

If a Federal award meets the definition of “funding agreement” under 37 C.F.R. 401.2 (a) and the City of Fort Lauderdale wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the City of Fort Lauderdale shall comply with the requirements of 37 C.F.R. Part 401, and any implementing regulations issued by the awarding agency.

If an agreement results in any copyrightable material, the City of Fort Lauderdale shall reserve the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes. Recipients shall have no obligation to the federal government with respect to program income earned from license fees and royalties for copyrighted materials, patents, patent applications, trademarks, and inventions produced under this award. However, Patent and Trademark Amendments (35 U.S. Code 18) apply to inventions made under an experimental, developmental, or research award.

## I. OTHER GRANT-SPECIFIC REQUIREMENTS

When funds are obtained from federal sources, the City of Fort Lauderdale shall use the procurement standards applicable to those funds, provided such standards are consistent with the minimum requirements of this policy. The City of Fort Lauderdale administers federal grant funds received from the U.S. Department of Housing and Urban Development (HUD). Grants are administered via a written contract between the City and the granting authority.

All purchases made with federal monies shall comply with the terms and conditions of the grant, the procurement standards applicable to the grant and specified in the grant agreement, and the City’s procedures regarding federally-funded purchases. Additional grant requirements specific to the funding source are listed below and shall be applied as applicable.

### A. Housing and Urban Development (HUD) Funding

As applicable, the City of Fort Lauderdale shall comply with additional requirements as provided under Department of Housing and Urban Development (HUD) grant

requirements, including but not limited to those requirements applicable to CDBG, CDBG-DR, and HOME.

### *1. Universal Notice – Procurement Alternative Requirements*

The City of Fort Lauderdale shall ensure compliance with the following additional alternative procurement requirements pursuant to the Universal Notice:

- The City of Fort Lauderdale shall clearly state the period of performance or date of completion in all contracts;
- The City of Fort Lauderdale shall incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements;
- The City of Fort Lauderdale may contract for administrative support, in compliance with 2 C.F.R. 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

### *2. CDBG and CDBG-DR National Objective Requirements*

CDBG and CDBG-DR grants require that recipients review the needs that have been identified in the Action Plan, as well as the services/goods to be procured, to ensure the proposed expenditure responds to the needs. The City of Fort Lauderdale is responsible for ensuring the expenditures of CDBG and CDBG-DR funds satisfy one of the three National Objectives. The City of Fort Lauderdale shall comply with 24 C.F.R. 570.208 by ensuring all activities funded by CDBG or CDBG-DR meet a National Objective. The City of Fort Lauderdale shall make clear the connection between disaster relief, recovery and related investments in housing, infrastructure and those made to businesses in support of the local economy.

The City of Fort Lauderdale is a direct recipient of CDBG-DR funding. The City of Fort Lauderdale is required to submit its own local Action Plan, which requires the City to identify needs and demonstrate the connection to unmet needs.

### *3. Disaster Website*

Pursuant to the Universal Notice, the City of Fort Lauderdale shall maintain a public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used and administered. The public website must be accessible to persons with disabilities and individuals with LEP in compliance with Section 504, Title II of the ADA, 17 Title VI, and Executive Order 13166.

To meet this requirement, the City of Fort Lauderdale shall make the following items available on its website:

- The action plan (including all amendments);
- The current approved DRGR action plan;
- Each QPR (as created using the DRGR system);
- Citizen participation requirements;
- Procurement policies and procedures;
- Description of services or goods currently being procured by the grantee;
- A copy of contracts the grantee has procured directly; and
- A summary of all procured contracts, including those procured by the grantee, recipients, or subrecipients (e.g., a summary list of procurements, the phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract, etc.).

The City of Fort Lauderdale shall post only contracts as defined in 2 C.F.R. 200.1.

#### *4. Public Access to Program Records*

Notwithstanding 2 C.F.R. 200.338, the City shall provide citizens with reasonable access to records regarding the past use of CDBG and CDBG-DR funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.<sup>78</sup>

#### *5. Accessibility*

When applicable, the City of Fort Lauderdale shall comply with all accessibility requirements pursuant to 24 C.F.R. 570.487(e) and 24 C.F.R. 570.614. The City of Fort Lauderdale shall ensure that all services, programs, and/or construction, including design and alteration, shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 and Appendix A to 41 C.F.R. Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).

The above accessibility requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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<sup>78</sup> 24 C.F.R. 570.508

#### *6. Section 3 of the Housing and Urban Development (HUD) Act of 1968*

When applicable, the City of Fort Lauderdale shall comply with Section 3 of the Housing and Urban Development (HUD) Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 C.F.R. 75.<sup>79</sup> Section 3 of the HUD Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons. The policy of the City of Fort Lauderdale with respect to Section 3 is expressed in the City of Fort Lauderdale Section 3 Policy which by this reference is incorporated herein.

Section 3 requirements apply to new training, employment, contracting and other economic opportunities which arise as a result of the expenditure of federal funds for construction.

#### *7. Section 109 of the Act*

When applicable, the City of Fort Lauderdale shall comply with Section 109 of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.), which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 C.F.R. part 6.<sup>80</sup>

The above Section 109 requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### *8. Equal Employment Opportunity; Equal Participation of Faith-Based Organizations in HUD Programs and Activities*

When applicable, the City of Fort Lauderdale shall comply with 24 CFR 5.109 and Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-

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<sup>79</sup> 24 C.F.R. 570.487(d), 24 C.F.R. 570.607(b)

<sup>80</sup> 24 C.F.R. 570.602

1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations, as amended by Executive Order 13559), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60.

The requirements for Executive order 13279 apply to all HUD programs and activities, except as may be otherwise noted in the respective program regulations in title 24 of the Code of Federal Regulations (CFR), or unless inconsistent with certain HUD program authorizing statutes. These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### *9. Flood Disaster Protection Act of 1973*

When applicable, the City of Fort Lauderdale shall comply the Flood Disaster Protection Act of 1973,<sup>81</sup> and shall include a provision in its contracts that mandates compliance with the provisions in 24 C.F.R. 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106), as amended, and the regulations in 44 C.F.R. Parts 59-79, which require that property owners purchase flood insurance for buildings located within Special Flood Hazard Areas (SFHA), when Federal financial assistance is used to acquire, repair, improve, or construct a building.

#### *10. Fair Labor Standards Act of 1938*

When applicable, the City of Fort Lauderdale shall comply with the Fair Labor Standards Act of 1938, and shall include a provision in its contracts that states that contractors must comply with the Fair Labor Standards Act of 1938,<sup>82</sup> as now or hereafter amended, which regulates wage, hour and other employment practices that govern the use of funds provided and the employment of personnel under this Agreement. The Fair Labor Standards Act (FLSA) establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week.

The City shall require that contractors pay its workers all monies earned by its workers including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act, 29 United States Code (U.S.C.) Section 207 9a(1), as amended; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S. Code Section 2000, et al., as amended. The Fair Labor Standards

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<sup>81</sup> 24 C.F.R. 570.605

<sup>82</sup> 29 U.S.C. Section 201 et seq

Act (FLSA) may apply even if the Davis-Bacon and Related Acts (DBRA) or Contract Work Hours and Safety Standards Act (CWHSSA) do not apply.

The Fair Labor Standards requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

#### *11. Lead-Based Paint*

When applicable, the City of Fort Lauderdale shall comply with Lead-Based Paint requirements, and shall include a provision in its contracts that states that contractors must comply with Lead-Based Paint requirements, which require that any construction or rehabilitation of structures containing residential units for work performed under HUD-funded projects shall be subject to HUD Lead-Based Paint Regulations at 24 C.F.R. 570.608, and 24 C.F.R. Part 35, Subpart B.<sup>83</sup> Such regulations require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Contractor must comply with the provisions found in 24 C.F.R. 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts, for any work which relates to residential structures.

The Lead-Based Paint requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

#### *12. Green Building Standards*

The City of Fort Lauderdale shall comply with local codes and national building codes for any work involving rehabilitation or construction, including design. When applicable, and to the extent feasible, the City of Fort Lauderdale shall comply with the Green Building Standard for Replacement and New Construction of Residential Housing, pursuant to Federal Register / Vol. 81, No. 117 / Friday, June 17, 2016 / Notices.

The Green Building Standards apply to all new construction of residential buildings and all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (i.e., demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load bearing interior or exterior walls. Green Building Standards require that all construction

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<sup>83</sup> 24 C.F.R. 570.487(c) and 570.608

covered above meet an industry-recognized standard that has achieved certification under at least one of the following programs:

- ENERGY STAR (Certified Homes or Multifamily High-Rise);
- Enterprise Green Communities;
- LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
- ICC–700 National Green Building Standard,
- EPA Indoor AirPlus (ENERGY STAR a prerequisite); or
- Any other equivalent comprehensive green building program.

The City of Fort Lauderdale shall require that projects funded, in whole or in part, by HUD funding comply with Green Building Standards, and shall include a provision in its contracts that states that contractors must comply with Green Building Standards to the greatest extent feasible.

The Green Building Standards requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

#### *13. Non-Collusion (The Sherman Antitrust Act of 1890)*

The City of Fort Lauderdale shall comply with the Sherman Antitrust Act of 1890, and shall include Contractor must comply with the requirements of The Sherman Act, which prohibit collusion. Collusion occurs when two persons or representatives of an entity or organization make an agreement to deceive or mislead another. Such agreements are usually secretive and involve fraud or gaining an unfair advantage over a third party, competitors, consumers, or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve promises of future benefits, price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

The Sherman Act prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Collusion, bid rigging, or other anticompetitive activity is considered a felony. Contractor is expected to report any suspected fraud, collusion, or impropriety from the inception of solicitation through the end of the contract term.

The non-collusion requirements shall extend to all third-party contractors and their contracts at every tier and all subrecipients and their subcontracts at every tier.

#### *14. Procurement When Using CDBG-DR as Non-Federal Match*

When using CDBG–DR grant funds as the non-Federal match, the City can adopt the procurement policies and procedures that satisfy the other Federal agency’s

requirements to promote consistency and seamlessly leverage funding, so long as the City meets other applicable cross-cutting requirements that apply to the CDBG-DR funds (e.g., Section 3 requirements, Davis Bacon Act, etc.). The City shall identify which procurement policies and procedures will apply and keep any decision document in its files.

Additionally, when CDBG-DR funds are used as the non-Federal match in another Federal program, the City is not required to comply with the Universal Notice alternative requirements in section III.B.7.a.