



## **PURCHASING POLICY**

Adopted 12/20/16

Revision Approved 11/27/18

### **PURPOSE**

The purpose of this policy is to ensure that Mille Lacs County's purchasing process complies with all applicable legal requirements; and federal and state regulations, including Minnesota Statutes Chapters 375 and 471, and applicable sections of Federal Uniform Guidance 2 CFR 200 (*Code of Federal Regulations*). It is the county's policy to purchase goods and services in the most ethical, legal, economical, and efficient manner possible, thereby ensuring best value to the taxpayers of the county. The county will act affirmatively to create a "level playing field" for disadvantaged business enterprises to achieve the goal of equal opportunity. (2 CFR 200.318A)

This policy, and all that it governs, shall be subject to audit by the Administrative Services Office, the Auditor-Treasurer's Office, and the Office of the State Auditor. Any deviation from this policy must be documented and authorized by the County Administrator or the County Board.

In cases where MN/DOT, DHS, grant requirements, or special circumstances require more restrictions, lower minimums, other approvals, or the like, it is the department's responsibility to follow any additional procedures to meet such requirements. Purchases made with grant, forfeiture, or other such funds will follow these same policies.

This policy was approved by the Mille Lacs County Board on December 20, 2016, and immediately replaces the existing policy, as well as any previous purchasing policies. The County Administrator is responsible for the annual review and updating of this policy.

All department heads, elected and non-elected, are responsible for following and carrying out the terms of this policy, whether performing the task or assigning the purchasing duties to a supervisor or employee. Employees making purchases are subject to the direction of the supervisor or department head.

### **PURCHASER RESPONSIBILITIES**

1. Funding for purchases must be available within the department's approved budget. The intent of budgeting is to request the expected funds needed to run the department. The intent of purchasing is to obtain those items needed in the most economical way. The intent is that by doing these two things, costs will come in under budget and results in lower costs for the citizens of the county whom we serve. Purchasing for the purpose of using excess funds is not an approved practice. While there are cases where this is a good economical practice, such action requires Administrator approval before doing so.

2. Those making purchases will consider whether combining purchases, purchasing from different vendors, breaking apart a purchase, leasing, or other methods of purchasing would be more economical. Purchases are not to be made of excess quantities or duplicate items. Department heads are encouraged to check with other departments or Facilities Operations Manager before purchasing items such as desks, file cabinets, or other items that may be available from another department or storage. (2 CFR 200.318D)
3. The department head, or authorized designee, who signs the claim form, is responsible for ensuring the most cost effective and efficient purchases. Such signature confirms the purchase has been made within the guidelines of this policy.
4. Proper documentation of the purchasing process is necessary for accountability. Persons making purchasing decisions must be able to provide proof of compliance with the county's purchasing policy, Minnesota Statutes, any required bids or quotes, documentation of “proprietary” or “best value” decisions, any grant requirements, selection of contract type, selection or rejection of any contractor, basis of contract price, or any other requirements that may be deemed necessary for the department’s situations. If the purchase is federally funded, the department is responsible for any documentation that is required. (2 CFE 200.318I). Such documentation is to be kept in the department per retention requirements.
5. Each department shall purchase goods and services that provide the “best value” for the county. Relevant factors that may be considered, in addition to price, are listed below. These items must be weighted as to consideration to be given in making a selection.
  - Installation costs.
  - Life cycle costs.
  - Quality and reliability of the goods or services.
  - Compatibility to current equipment.
  - Delivery terms, including additional costs, such as mileage and time to pick-up.
  - Indicators of probable vendor performance under the contract, such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support.
  - Cost of any employee training associated with a purchase.
  - Effect of a purchase on department productivity
  - Compatibility with existing equipment and software.
  - Other factors relevant to determining the best value for the county in the context of a particular purchase.
6. All solicitations for purchases of goods or services will be done in a manner to encourage open competition. (2 CFR 200.319A) Descriptions will clearly state the required features without requiring unnecessary features or services so as to restrict the purchase to a specific brand or service. (2 CFR 200.319 C1). Any listing of prequalified persons, businesses, or products must be kept current and include enough qualified sources to ensure maximum open and free competition, and allow for other potential businesses to be included.

## **PURCHASING PROTOCOL**

1. Determine if the purchase of an item through any Minnesota Cooperative Purchasing Venture (CPV) or other approved national contract is beneficial. These contracts and approved vendors should be used when least expensive. MN Statute requires consideration of CPV contracts exceeding \$25,000 for purchase of supplies, material, or equipment. *(2 CFR 200.318E & F)*
2. If an employee purchases or contracts for goods or services contrary to Mille Lacs County policy, the purchase shall be void. In accordance with Minnesota Statutes, the elected or appointed official who signed the claim form shall be personally liable for the cost of the order or contract. If the order or contract has already been paid for out of Mille Lacs County funds, the amount may be recovered by appropriate action.
3. Department heads may not enter into a contract on behalf of the county without authorization of the County Board and/or the County Administrator.
4. Employees making purchases of goods or services for the county must follow the county's conflict of interest policy.
5. When applicable, vendors hired to provide services to the county must be licensed, insured, meet worker's compensation limits, and be bonded. The Administrative Services Office will have information on the amounts required for each category.
6. Only responsible contractors possessing the ability to successfully perform the terms of the contract will be hired. Consideration will be given for integrity, compliance of public policy, past performance record, and financial and technical resources. *(2 CFR 200.318H)*. All contracts \$50,000 and greater must include Responsible Contractor documents.
7. Time and material type contracts are to be used only when no other contract is suitable. Such contracts must include a ceiling price over which the contractor exceeds at his own risk. *(2 CFR 200.318J)*
8. Value Engineering will be used whenever deemed appropriate.*(2 CFR 200.318G)*
9. Oversight of contractor's performance and specifications is the responsibility of the initiating department head. *(2 CFR 200.318B)*. Settlement of contractual or administrative issues is the responsibility of the County Administrator. The County Administrator will consult the County Board, when applicable, for necessary action on their part *(2 CFR 200.318K)*
10. Purchases of computer hardware; software; printers; scanners; digital cameras, copiers; fax machines; phones, including cell phones and air cards; and/or other related peripherals will be under the authority of the County Administrator in conjunction with Technology Services (TS).

11. Contracts for cell phones/air cards/other mobile device must be pre-approved by the County Administrator. See Contracts section of this policy for guidelines regarding contracts for phone plans, copier, or other maintenance or service agreements.

12. Purchases, services, and contracts to be paid from the general ledger Capital Projects Funds or General Fund departments, General Administration (060), Contingency (811-6804), or County Board (003), shall only be made when authorized by the Administrative Services Office or Auditor-Treasurer's Office. This includes professional services, training, registrations, maintenance, equipment, supplies, or any other such expense.

## **PURCHASE AUTHORIZATION**

Funds shall be requested during the annual budgeting process for all expenditures, including dedicated funds, forfeiture funds, and grant funds. Approved, budgeted funds must be available before a purchase commitment is made.

**Maintenance** – Maintenance of buildings, furniture, or equipment required to continue the operation of their respective departments may be made by department heads within their approved annual budget. Maintenance is for repairing of items, not replacing.

**Supplies** – Supplies are considered to be ongoing, replenished items that last about one year. Supplies may be purchased as needed by departments within their approved annual budget.

*For many departments, lesser-valued items which could be thought of as equipment, including items such as hand drills, hammers, electric staplers, file cabinets, chairs, calculators, cameras, and other items generally valued under \$500 should be included as supplies, unless the department has budgeted them otherwise.*

**Public Works Materials** – Items such as culverts, salt, gravel, cutting edges, crackfiller, etc., that are considered material for construction and maintenance may be purchased as needed within the annual approved budget.

**Emergency** – In an emergency situation, the department head will contact the County Administrator for approval or instruction on how to proceed.

If neither the County Administrator nor the Assistant Administrator are available, the department head may contact the Board Chair. If the Board Chair is not available, then the department head, after full review of the situation, may proceed with action as he/she deems necessary. The County Administrator is to be informed of the purchase when he/she is available, so further action can be taken if needed.

**Non-Budgeted Purchases** – In any of the following situations, the department head will contact the County Administrator for approval or instruction on how to proceed. The County Administrator will determine whether the situation requires Board approval or submission of information to the Board for informational purposes.

- A non-budgeted, non-emergency purchase of goods or services
- Sufficient funds for a purchase are not available in the department's budget
- Reallocation or additional budget appropriations are needed

**Equipment or Services of \$5,000 or less; \$10,000 or less for Public Works**  
**(Less than \$10,000 if federally funded-micro purchases)**

1. Purchase price or value, which includes shipping, installation, and other required set up fees, can be purchased as needed by the department up to the approved annual budget. Payment is made through the regular claims process.
2. Such purchases do not require bids or quotes, but are expected to be made in the most economical and efficient manner. Whenever possible, purchases should be distributed equitably among qualified vendors. (2 CFR 200.320A)
3. Some lesser-value items may be considered as supplies. Refer to the Supplies section of this policy.
4. When purchasing with federal funds, items ~~\$3,000-10,000~~ and greater require quotes from an adequate number of qualified sources. (2 CFR 200.320 B)

**Equipment or Services greater than \$5,000; greater than \$10,000 for Public Works, but Under \$175,000 ( \$10,000 and greater if federally-funded small purchases)**

Equipment purchase price includes shipping, installation, and other required set up fees.

1. Services covered by contract, maintenance or service agreement, joint powers, lease, or any other document that commits county resources, must see policy Contracts section in this policy.
2. Purchases of equipment and services must be itemized and approved during the annual budgeting process.
3. At least two (2) quotes must be obtained. (2 CFR 200.320B)
4. Even if the equipment or service is itemized in the budget, department head shall submit a completed agenda request form for pre-approval to the County Administrator, including the two (2) price quotes. For Public Works quotes must be obtained if greater than \$10,000. After reviewing, the County Administrator will submit to County Board for approval.
5. When items are purchased based on being proprietary in nature or by reason of “best value,” and no quotes have been obtained due to these reasons, documentation to this effect must be included in lieu of quotes on the Board agenda request form submitted to the administration for presentation to the board.
6. If a vendor is used due to being proprietary in nature or due to “best value,” research must be done per the schedule below to ensure this is still a valid reason for using such determination. Documentation of such research is to be kept on file in the department.

Dollar amounts based on annual amount spent with that vendor, or per contract:

- \$5,000- \$49,999                      Research every 5 years
- \$50,000 - \$99,999                    Research every 3 years
- \$100,000 & greater                    Research every 2 years

7. All contracts estimated to exceed \$25,000 are required to consider MN Cooperative Purchasing Venture (CPV) before purchasing from another source. (*MN Statute 471.345, subd 15*)
8. Sealed bids may be obtained if the department so chooses. Refer to the Bidding section of this policy.
9. All written documentation included in the Board agenda packets will be kept on file in the Administrative Services Office for two years. Other bids, contracts, and applicable documentation shall be kept on file in the originating department.

### **Equipment or Services Equal to or Greater than \$175,000**

If the amount of the purchase or contract for equipment or services is estimated at \$175,000 or greater sealed bids or competitive proposals shall be solicited by public notice, or purchase made through state contract (*MN Statute 471.345*). The following steps should be considered for sealed bids:

1. Specifications shall be prepared by the department head, elected or appointed official, or designee. The Administrative Services Office will assist with drafting Requests for Proposals (RFP's) and specifications when requested. For federally funded procurement, an independent estimate must be made before receiving bids or proposals. (*2 CFR 200.323A*) Cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. (*2 CFR 200.323d*)
2. Authorization shall be requested from the Mille Lacs County Board to advertise for bids on the county website or other applicable locations or means. The bid solicitation shall be published for the applicable length of time per M.S. 331A.03. In addition, proposals and specifications may be sent to the names listed on any prospective vendor's list maintained by the department. A deadline date, time, and location for submission shall be included in the publication. (*2 CFR 200.320 C21*) The County Engineer is authorized to advertise for bids for Public Works projects.
3. Bids shall be properly dated and stamped upon receipt.
4. Bids shall be opened publicly (*2 CFR 200.320 C2III*). They will be reviewed, and sent, along with an agenda request, to the County Administrator for presentation to the Board. The County Administrator, elected or appointed official, or designee shall recommend all bids or requests for proposal to the Mille Lacs County Board for approval.
5. All contracts or open market purchases shall be awarded to the lowest responsible bidder, (*2 CFR 200.320 C2IV*). All contracts approved by the Mille Lacs County Board must be signed by the Board Chair or designee.
6. The county retains the right to reject any and all bids. When a project is federally funded, 2CFR 200.320 C2IV allows for rejection of all bids when there is a sound documented reason.
7. Non-competitive proposals are acceptable only when competition is deemed inadequate and solicitation made from only one source. This method can be used in emergency situations.

## **Bid and Quotation Specifications**

1. Should conform to acceptable industry-wide standards.(2 CFR 200.320C2II)
2. Should be clear, definite, and concise.
3. Should be written to provide a firm, fixed-price contract, so the selection of the successful bidder can be made principally on the basis of price (2 CFR 200.320 C1 111). Should also describe the performance requirements, rather than its formulation, subscription, or design.
4. Should be written to permit, to the extent possible, free and full competition without placing unreasonable requirements that would make it more difficult to qualify to do business with Mille Lacs County; unnecessary experience or excessive bonding will not be required. The county will not accept non-competitive pricing practices or contracts to consultants that are on retainer contracts, or that present a conflict of interest. (2 CFR 200.319A)
5. Should consider cost, length, and terms of any warranty provisions, reliability and maintenance costs, and repurchase value of the equipment after a specified number of years.
6. Should not exclude all but one type or kind except when permitted by law.
7. Should not call for features or for a level of quality not needed for the intended use, except in cases where such features or the level of quality are essential for some future considered use, or result in overall economic advantage to the county.
8. For federally funded projects, geographical preferences will not be used in the evaluation of bids or proposals, unless federal statutes expressly mandate or encourage such preference. (2CRF200.319B)
9. Should vendor selection will be for best value, the solicitation document must state the relative weight of price and other selection criteria. (MN statute 16C.28)

## **CONTRACTS**

A contract is any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which an agency is a part (MN Statute 16C.02).

1. When a vendor is being hired to perform services for the county, a contract or agreement may be required. Contracts can be written for purchases of goods, materials, or equipment; agreements for professional services; joint powers agreements; mutual aid agreements; vendor contracts; leases; maintenance agreements; service agreements; and any other documents that commit county resources. Questions regarding whether or not a contract is needed should be referred to the County Administrator.
2. Annually the department may take a list to the County Board to obtain approval for the department head, or their designee, to sign contracts when they become due. Such listing is to be for ongoing contracts and must contain the vendor and best calculation of cost.

3. Lead contracts for CVS under statute 256.0112 will be accepted by Mille Lacs County.
4. Foster care and service agreements on an approved template can be signed by the CVS Director.
5. County Administrator is authorized to sign contracts for expert testimony for the County Attorney's Office.

**Under \$5,000; Under \$10,000 for Public Works:** *A contract is not needed for purchases or services.*

Examples of services provided for which contracts need not be written include: vehicle or equipment repair, minor building or grounds repair, paper service, delivery service, printing, or designing.

If an agreement is requested by a new vendor to provide annual services or maintenance, which could be considered standard for such things as copiers, voter machines, postage meter rent or maintenance, or other such equipment or related items, such agreement may be signed by the County Administrator as the Board's designee.

For renewal of an agreement per above paragraphs, a listing of those items can be submitted to the Board annually to allow the department head to sign.

**Equal to or greater than \$5,000, or equal to or greater than \$10,000 for Public Works , but under \$100,000:** *A contract is probably needed.*

Contracts must be approved by the County Board. They are to be submitted to the County Administrator, who will determine if they need approval of the County Attorney, and will prepare them for County Board action.

**Equal to or greater than ~~\$100,000~~:** *A contract is required.*

Contracts must be approved by the County Board. They are to be submitted to the County Administrator, who will determine if they need approval of the County Attorney, and will prepare them for County Board action.

### **Best Value**

All County departments are encouraged to use "best value" practices for contracts. Mille Lacs County shall award a contract to the bidder offering the best value for the county, while conforming to the specifications required based upon the following factors, in addition to price:

- The quality and availability of the goods or contractual services and their adaptability to the use required;
- The scope of conditions attached to the bid;
- The bidder's ability, capacity, and skill to fulfill the contract or provide the service required;
- The bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
- The bidder's character, responsibility, integrity, experience, or demonstrated capability;



- The quality of performance of previous contracts or services;
- The bidder's previous and existing compliance with laws relating to the contract or service;
- The bidder's previous or existing non-compliance with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates;
- The sufficiency of the bidder's financial resources and ability to perform the contract or provide the service; and
- The bidder's ability to provide future maintenance, repair parts, and service for the contract's provided good or service.

### **Contract Change Orders**

Change orders, work orders, supplemental agreements, or addendums resulting in an increase of 10% or less, but not to exceed \$5,000, to the cost of an overall *contract*, can be approved by the department head or County Administrator. If the change(s) will result in an increased overall cost of greater than 10%, over \$5,000; has the potential of negatively affecting the completion date, specifications, or requirements; or increases the county risk, the County Administrator will take the matter to the County Board for approval.

Change orders, work orders, supplemental agreements, or addendums resulting in an increase of 10% or less to the overall cost of a *project* for Public Works, can be approved by the County Engineer or County Administrator. If the change(s) will result in an increased overall cost of greater than 10%; or has the potential of negatively affecting the completion date, specifications, or requirements; or increases the county risk, the County Administrator will take the matter to the County Board for approval.

If changes have an insignificant effect on the project, based on the department head's recommendation, the County Administrator can approve the change and report it to the County Board as information.

For larger county construction projects where change orders in the contract are likely, the County Board may, by resolution, appoint the County Administrator or designee to approve such change orders and report it to the Board as information.

**IC 134's** must be submitted to the contracting department, when required, prior to final payment.

**Federally funded contracts** must contain the applicable provisions described in Appendix 11 to Part 200 - Contract Provisions under Federal Awards, which is attached as an appendix to this purchasing policy. Any department receiving federal funds for a contracted project shall document their files as to the need and the completion of the items listed.

### **BOND REQUIREMENTS**

#### 1. **Bid Bonds**

On projects of \$100,000 or more, bid security is required from each bidder in an amount equivalent to five percent of the base bid amount. Each bid shall be accompanied by a certified check, cashier's check, or corporate surety bond as bid security, and is subject to forfeiture for

failure to contract within ten days after tender. The successful bidder's security check or bond may be retained for 60 days after delivery to ensure compliance with specifications, or until such time as a performance bond has been furnished. Unsuccessful bidders will have their check or bond returned to them; the successful bidder's check or bond will be kept on file with the bid. Any bid that requires a performance bond will also require bid security to accompany the bid; failure of a bidder to furnish bid security as specified may be cause for rejection of the bid.

## 2. Performance/Payment Bonds

On projects of \$100,000 or more, upon notice of a contract, the successful bidder shall execute a contract performance guaranty consisting of a performance bond and a payment bond issued by a company authorized to do business in the State of Minnesota. Each bond shall be in the amount of 100% of the total amount proposed for each, for a total aggregate liability of 200%. The Mille Lacs County Attorney may be consulted regarding performance bonds when necessary.

## 3. Performance Bond Changes

Since bonds are based on the contract price, if the contract price increases due to change orders, unforeseen conditions, cost overruns, or any other reason, the county will need to determine if the bond should also be increased. When changes occur that increase the price by 25%, the County Administrator is to be consulted. The department head will make a recommendation to the County Administrator regarding the costs involved, the contractor's past performance, the progress of the project, and the costs and risks to the county. The County Administrator will determine if the situation should go to the County Board for approval, or for informational purposes only.

Appendix 11 to Part 200

<p>(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.</p>
<p>B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.</p>
<p>(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”</p>
<p>D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.</p>
<p>(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.</p>

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the 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.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

J) See §200.322 Procurement of recovered materials.

200.322: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

200.212 Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

180.300 When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking SAM Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person